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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

IN THE MATTER OF JAN ALF ASSARSSON,
Petitioner.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

DAVID P. SCHIPPERS
RICHARD V. HOUPT
SHELDON DAVIDSON
DONALD B. MACKAY
MARILEE ROBERG
Attorneys for Petitioner

Of Counsel:

RICHARD V. HOUPT
SHELDON DAVIDSON
MARILEE ROBERG
PEDERSEN & HOUPT
Suite 3400
180 North LaSalle Street
Chicago, Illinois 60601
(312) 641-6888

DAVID P. SCHIPPERS
DONALD B. MACKAY
SCHIPPERS, LONG & MACKAY
79 West Monroe Street
Suite 400
Chicago, Illinois 60603
(312) 236-9177

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QUESTIONS PRESENTED

I.

WHETHER A MAGISTRATE'S FIRST IMPRESSION INTERPRETATION OF SUBJECT MATTER JURISDICTION LANGUAGE COMMON TO EVERY UNITED STATES EXTRADITION TREATY, EXPANDING IT TO AUTHORIZE EXTRADITION WHERE THE DEMANDING STATE HAS NOT CHARGED A PERSON WITH A CRIME, BUT MERELY SUSPECTS HIM, SHOULD BE ALLOWED TO STAND UNREVIEWED IN A HABEAS CORPUS PROCEEDING.

II.

WHETHER A COURT OF APPEALS SHOULD BE PERMITTED TO DENY THE FULL SCOPE OF REVIEW MANDATED IN *FERNANDEZ* v. *PHILLIPS*, 268 U.S. 311 (1925), BY REFUSING TO REVIEW A MAGISTRATE'S ASSUMPTION OF SUBJECT MATTER JURISDICTION TO ORDER COMMITMENT FOR INTERNATIONAL EXTRADITION.[1]

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[1] The parties to the proceeding in the Seventh Circuit Court of Appeals are the Petitioner, Jan Alf Assarsson, and the United States of America, acting for and on behalf of the Kingdom of Sweden.

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B. Order of the United States Court of Appeals for the Seventh Circuit, dated December 23, 1980, denying Relator's Petition for Rehearing and Suggestion for Rehearing En Banc.

C. Memorandum of Magistrate James T. Balog, dated October 20, 1978.

D. Order of Magistrate James T. Balog, dated November 21, 1978, modifying October 20, 1978 Memorandum and transcript of proceedings relating thereto.

E. Convention on Extradition and Protocol between the United States and Sweden.

F. Application for a Detention Order, dated March 5, 1976, filed by the Swedish Prosecutor in the Malmo, Sweden District Court.

G. The April 1, 1976 Ruling of Malmo District Court Judge Åke Roth declaring Jan Alf Assarsson arrested.

H. Transcript of the June 21, 1978 deposition of Bertil Isacson with attached translations admitted to be correct.

I. Transcript of the June 18, 1978 deposition of Jan Wijkstrom, with attached translations admitted to be correct.

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OCTOBER TERM, 1980

IN THE MATTER OF JAN ALF ASSARSSON,
Petitioner.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PRAYER

The Petitioner, Jan Alf Assarsson, respectfully prays that a Writ of Certiorari issue to review the Judgment and Order entered by the United States Court of Appeals for the Seventh Circuit on October 31, 1980, affirming the District Court's denial of Petitioner's Amended Petition for a Writ of Habeas Corpus, and the Order entered by the United States Court of Appeals for the Seventh Circuit on December 23, 1980, denying the Petition for Rehearing herein.

OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Seventh Circuit, not yet reported, affirming the dismissal of Petitioner's Amended Petition for a Writ of Habeas Corpus by the United States District Court, is attached as Appendix A. The Memorandum of Magistrate James T. Balog, dated October 20, 1978, is attached as Appendix C. The November 21, 1978 Order of the Magistrate amending his earlier Memorandum and the transcript relating to it are attached as Appendix D.

STATEMENT OF JURISDICTION

The Judgment of the United States Court of Appeals for the Seventh Circuit was entered on October 31, 1980, affirming the District Court's dismissal of the Petitioner's Amended Petition for a Writ of Habeas Corpus and order of commitment for extradition to Sweden. The Court of Appeals denied a timely Petition for Rehearing on December 23, 1980.

The jurisdiction of this Honorable Court is invoked under 28 U.S.C. 1254(1) and Rule 19(1)(b) of the Rules of this Court.

The Petitioner invoked jurisdiction of the District Court under 28 U.S.C. 2242, applying for the issuance of a Writ of Habeas Corpus.

This Petition for a Writ of Certiorari has been filed within the time permitted by law after the denial of the Motion for Rehearing by the Seventh Circuit Court of Appeals.

CONSTITUTIONAL PROVISIONS INVOLVED

Article III, Section 2 of the Constitution of the United States provides, in relevant part:

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; — to all Cases affecting Ambassadors, other public Ministers and Consuls; — to all Cases of admiralty and maritime Jurisdiction; — to Controversies to which the United States shall be a Party; — to Controversies between two or more States; — between a State and Citizens of another State; — between Citizens of different States; — between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

TREATIES INVOLVED

The Convention on Extradition and Protocol between the United States and the Kingdom of Sweden is attached as Appendix E.

STATUTORY PROVISIONS INVOLVED

The Swedish Code of Judicial Procedure, Chapter 45, Sections l, 4 and 9 provide:

Section I

A prosecutor who desires to institute a public prosecution shall file with the court a written application for a summons against the person to be charged; however, to the extent found appropriate, the court may authorize the prosecutor to issue a summons.

A public prosecution is deemed commenced when the summons application is filed with the court or, if the prosecutor has issued the summons, when it is served upon the defendant.

If a person is undergoing prosecution for an offense, no new prosecution for that offense may be instituted against him.

Section 4

In the summons application the prosecutor shall identify:

1. the defendant;
2. the injured person, if any;
3. the criminal act charged, specifying the time and place of its commission, and the other particulars required for its identification, and the applicable statutory section or sections;

4. the evidence he desires to offer and what he intends to prove by each specified item; and

5. the circumstances rendering the court competent, unless this is apparent from other allegations.

If the prosecutor, pursuant to chapter 22, desires to initiate simultaneously with the prosecution a private claim based on the offense, he shall state in the application the claim, the circumstances upon which it is founded, the evidence he desires to offer, and what he intends to prove by each specified item.

If the defendant is under arrest or in detention, information to this effect shall be stated in the summons application.

The application shall be signed by the prosecutor.

Section 9

If the application is not dismissed, the court shall issue a summons calling upon the defendant to answer the charge.

The summons together with the summons application and the papers annexed thereto shall be served upon the defendant.

Title 18, Section 3184, United States Code, provides:

Whenever there is a treaty or convention for extradition between the United States and any foreign government, any justice or judge of the United States, or any magistrate authorized so to do by a court of the United States, or any judge of a court of record of general jurisdiction of any State, may, upon complaint made under oath, charging any person found within his jurisdiction, with having committed within the jurisdiction of any such foreign government any of the crimes provided for by such treaty or convention, issue his warrant for the apprehension of the person so charged, that he may be brought before such justice, judge, or magistrate, to the end that the evidence of criminality may be heard and considered. If, on such hearing, he deems the evidence sufficient to sustain the

charge under the provisions of the proper treaty or convention, he shall certify the same, together with a copy of all the testimony taken before him, to the Secretary of State, that a warrant may issue upon the requisition of the proper authorities of such foreign government, for the surrender of such person, according to the stipulations of the treaty or convention; and he shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender shall be made.

Title 18, Section 3190, United States Code, provides:

Depositions, warrants or other papers or copies thereof offered in evidence upon the hearing of any extradition case shall be received and admitted as evidence on such hearing for all the purposes of such hearing if they shall be properly and legally authenticated so as to entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party shall have escaped, and the certificate of the principal diplomatic or consular officer of the United States resident in such foreign country shall be proof that the same, so offered, are authenticated in the manner required.

STATEMENT OF THE CASE

Jan Alf Assarsson ("Assarsson"), Petitioner, is a Swedish subject. He was admitted into the United States as a permanent resident in 1960. Since that date, Assarsson has conducted an import-export business, including the purchase of merchandise for resale in European markets.

On March 5, 1976, a Swedish prosecutor filed an Application for a Detention Order in the District Court in Malmo, Sweden. The Application alleged that Assarsson was *suspected* on good grounds of gross arson, attempted gross fraud and gross fraud. (App. F.) Pursuant to that application, Malmo District Court Judge Åke Roth issued a "Ruling," dated April 1, 1976, which declared Assarsson arrested and specifically directed that "prosecution proceedings shall be commenced not later than November 1, 1976." (App. G.) Sweden did not file charges against Assarsson within the time-frame set by the Court and instead sought and obtained court orders extending the time in which to file charges. The most recent Swedish court order, issued November 3, 1980, extended the time in which a charge must be brought against Assarsson to November 1, 1981. Assarsson has not yet been charged in and by the Kingdom of Sweden.

An extradition complaint was filed against Assarsson on June 30, 1977. That complaint was dismissed for reasons not relevant here. A hearing on a second complaint was held on June 30, 1978 before Magistrate James M. Balog. Assarsson contended that the Magistrate lacked subject matter jurisdiction because, under Article I of the treaty there are only two classes of persons who are subject to extradition: (1) those charged in and by the demanding State with the commission of extraditable offenses, and (2) those convicted of extraditable crimes in the demanding State. Assarsson asserted that, under the clear language of Article I, the person whose extradition is sought cannot be one who is merely suspected of the commis-

sion of an offense. He further argued that extradition treaties of the United States, as interpreted by the Supreme Court, have never been held to apply to persons against whom no charge has been laid.

In support of his position that he had not been charged with the commission of any crimes in and by the demanding State, Assarsson introduced at the extradition hearing, without objection by the government, the depositions of four Swedish attorneys (each of whom was expert in Swedish criminal law and procedure), and certain sections of the Swedish Code of Judicial Procedure. In their depositions, the Swedish attorneys testified that Judge Roth's April 1, 1976 "Ruling" did not constitute a charge under Swedish law. They testified further that there were only two ways under Swedish law that a person could be charged with the commission of a crime: (1) the filing by the prosecutor of a summons application with the Court, or (2) the filing and service of a summons upon the suspect. They testified further that, in Sweden, the institution of a criminal prosecution and the filing of charges occur at the same time, i.e., when the written application for summons is filed pursuant to Swedish Code of Judicial Procedure, ch. 45, Section 1. (See, e.g., App. H and I.) Jan Wijkstrom, a Swedish public defender, testified at the hearing that Assarsson's absence from Sweden did not prevent the Swedish prosecutor from filing the summons application. This evidence was not controverted by the government.

On October 20, 1980, the magistrate rejected Assarsson's claims in a Memorandum opinion and issued a commitment order directing the United States Marshal to take Assarsson into custody and hold him until his surrender to Sweden. (App. C.) On November 21, 1978, the magistrate modified his Memorandum, holding that although Assarsson was not charged in and by Sweden in accordance with its Code of Judicial Procedure, he had been "charged under the terms of the treaty." (App. D.) The magistrate interpreted the treaty's requirement

that a person be charged (Article I) to be been satisfied if Sweden complied with Article XI and submitted a detention order along with the extradition request. The magistrate cited no authority in support of his interpretation.

Assarsson petitioned the District Court for a writ of habeas corpus challenging the legality of the magistrate's order on the same grounds he asserted before the magistrate. The District Court denied the Petition.

The Seventh Circuit Court of Appeals declined to review the magistrate's first impression interpretation of Article I to permit extradition upon a finding that a person had been "charged under the terms of the treaty," even though he had not been charged by the demanding State. The Court of Appeals held that the Supreme Court's decision in *Fernandez* v. *Phillips,* 268 U.S. 311 (1925), precluded review of the magistrate's determination on habeas corpus. On this basis, it affirmed the District Court's denial of the petition, effectuating the magistrate's order of commitment. On Assarsson's motion, without objection by the government, the Court of Appeals issued its order staying the mandate and gave Petitioner until February 23, 1981, to file his Petition for a Writ of Certiorari in the United States Supreme Court.

REASONS FOR GRANTING THE WRIT

I.

Article I of the extradition treaty between the United States and the Kingdom of Sweden, in pertinent part, provides:

> Each Contracting State undertakes to surrender to the other, subject to the provisions and conditions laid down in this Convention, those persons found in its territory *who have been charged with or convicted of any of the offenses* specified in Article II of this Convention. . . [Emphasis added.]

Every extradition treaty made by the United States contains substantially the same provisions and, in particular, the same terms underlined above.

Clearly, a condition of extradition under the foregoing treaty provision is that the person to be extradited be either (1) "charged with" or (2) "convicted of" a specified crime. Further, a finding that the person sought to be extradited has been so charged with or convicted of a crime is a prerequisite to the determination of the magistrate's subject matter jurisdiction.

Without the aid of any prior court decisions construing the provision in question, the magistrate, as a matter of first impression, interpreted Article I to mean that the Swedish detention order constituted a charge against Assarsson "under the terms of the treaty" and thereby found subject matter jurisdiction. This determination is in conflict with this Court's decisions in *Maximov* v. *United States,* 373 U.S. 49, 54 (1963) and *United States* v. *Patterson,* 150 U.S. 65, 68 (1893).

In *Maximov, supra,* this Court held that it is improper for a court to sanction a deviation from the clear import of an international treaty when there is no indication that application of the words of the treaty according to their obvious meaning effects a result inconsistent with the intent of its signatories. 373 U.S. at 54.

In *Patterson, supra,* this Court held:

> A criminal charge, strictly speaking, exists only when a formal written complaint has been made against the accused and a prosecution initiated. . . . In the eyes of the law a person is charged with a crime only when he is called upon in a legal proceeding to answer such a charge. *Mere investigation by the prosecuting officers, or even the inquiry and consideration by examining magistrates of the propriety of initiating a prosecution, do not of themselves create a criminal charge.*

150 U.S. at 68 (emphasis added).

The State Department, which negotiates and administers extradition treaties, defines "charge" consistently with this Court's holding in *Patterson.*

> Extradition is the process by which persons charged with or convicted of crime against the law of a State and found in a foreign State are returned by the latter to the former for trial or punishment. *It applies to those who are merely charged with an offense but have not been brought to trial;* those who have been tried and convicted and have subsequently escaped from custody; and to those who have been convicted *in absentia. It does not apply to persons merely suspected of having committed an offense but against whom no charge has been laid* . . . .

M. Whiteman, 6 *Digest of International Law,* (1968) (Department of State Publication 8350) ch. XVI, p. 727 (emphasis added).

The term "charged" is used repeatedly in the treaty, and never in a context or in any manner which suggests that the parties to the treaty intended any meaning other than that ascribed to it by this Court in *Patterson* and by the State Department in its treatise.

Rejecting this Court's and the State Department's authoritative definitions of "charge," the magistrate rewrote the treaty to provide for the extradition of persons merely suspected of, but not charged with, criminal activity in the demanding State.

Is the State Department now to apply one standard to the extradition treaty with Sweden, based on the magistrate's convoluted opinion, but continue to follow the contrary standards established by this Court in *Maximov* and *Patterson* to all other extradition treaties? Such a double standard inevitably follows from the Court of Appeals' refusal to review, on habeas corpus, the magistrate's expansion of the treaty's subject matter jurisdiction.

This absurd result can be avoided only by this Court's issuance of its Writ of Certiorari to the Seventh Circuit Court of Appeals.

II.

This Court held in *Fernandez* v. *Phillips,* 268 U.S. 311 (1925), that habeas corpus is available "to inquire *whether the magistrate had jurisdiction,* whether the offense charged is within the treaty and, by a somewhat liberal extension, whether there was any evidence warranting the finding that there was reasonable ground to believe the accused guilty." 268 U.S. at 312 (emphasis added).

Notwithstanding this clear and unambiguous language, the Seventh Circuit Court of Appeals refused to review the magistrate's bold assumption of subject matter jurisdiction grounded on his interpretation of the treaty's basic jurisdiction conferring provision. "We do not review the magistrate's determination that Assarsson was "charged" because we hold that it is not reviewable on habeas corpus." (Opinion, p. 6.)

Although it conceded that *Fernandez* defines the scope of habeas corpus review of extradition rulings, the Court of Appeals ignored this Court's holding that habeas corpus is available "to inquire whether the magistrate has jurisdiction". Instead, it interpreted *Fernandez* to restrict "review [to] only those conditions [of the treaty] which preclude extradition for offenses which are otherwise extraditable." (Opinion, p. 8.)

The consequences of the Court of Appeals' refusal to review the magistrate's decision are twofold. First, it presents the State Department with a dilemma in administering the extradition treaty with Sweden. If the State Department follows the magistrate's Memorandum, it must disregard *Patterson, supra,* and the Department's unequivocal statements that the United States cannot extradite persons merely suspected of having committed an offense but against whom no charge has been laid. M. Whiteman, 6 *Digest of International Law, supra.*

Second, if the rulings below remain unreviewed by this Court, a magistrate will have usurped the rightful and exclusive functions of the President and the Senate to make and ratify international treaties. Had the Senate intended to permit the Executive to surrender persons to a foreign government without requiring the criminal proceedings in the demanding State to have reached the *charge* stage, it could have adopted the language in the European Convention on Extradition ("ECE"), 359 U.N.T.S. 273 (December 13, 1957), to which Sweden is a party. The ECE requires only that

> the Contracting Parties undertake to surrender to each other, subject to the provisions and conditions laid down in this Convention, all persons against whom the competent authorities of the requesting Party are proceeding for an offense or who are wanted by the said authorities for the carrying out of the sentence or detention order.

ECE, Article I.

In effect, the magistrate has read this language into the treaty, despite the United States Senate's rejection of it.

In order to achieve uniformity in the enforcement of our international treaty obligations and to give stability to the delicate balance of our separation of powers doctrine, it is imperative that this Court issue its Writ of Certiorari to the Seventh Circuit Court of Appeals.

III.

This Court last undertook a definitive and comprehensive analysis of international extradition forty-five years ago in *Valentine* v. *United States ex rel. Neidecker*, 299 U.S. 5 (1936). During the intervening years, the world has undergone radical changes. Rapid technological advances in the areas of communication and transportation have exacerbated the problem of persons crossing national boundaries to commit crimes or flee justice. Accordingly, there is a concomitant need for both certainty and effectiveness in the operation of extradition treaties. These considerations, viewed in the context of the now unsettled state of the law concerning the reviewability of a magistrate's interpretation of the subject matter jurisdiction of an international extradition treaty, require this Court to again address these vital issues. Unless this Court grants this Petition and re-examines the law applicable to international extradition, the lower courts will be without authoritative guidance as to the reviewability of a committing magistrate's assumption of subject matter jurisdiction. Moreover, they will be affirmatively misled by the holding and opinion of the Seventh Circuit Court of Appeals.

IV.

According to the government counsel at the oral argument in the Court of Appeals, Sweden has withheld initiating extradition proceedings against other persons in the United States against whom only a detention order had been issued because of the serious questions raised in this case. The Seventh Circuit, by side-stepping its responsibility to decide the jurisdictional question raised, has failed to remedy the problem created by the magistrate when he improperly ruled that Assarsson had been charged "under the terms of the treaty." Still left unanswered is the question of the proper construction to be placed upon the phrase ". . . who have been *charged* with or convicted of any of the offenses specified in Article II of the Convention." Article I (emphasis added).

This case, in its present posture, gives no direction as to how the Kingdom of Sweden should proceed. The only authority that currently can be cited to any American court on the question of jurisdiction is the opinion of a magistrate sitting in the Northern District of Illinois—an opinion with virtually no precedential value. Only if this Court issues its Writ of Certiorari to the Seventh Circuit Court of Appeals will the United States and Sweden have the certainty necessary to carry out both the spirit and the letter of the treaty.

V.

There is a compelling need for this Court to exercise its supervisory power to compel the Seventh Circuit Court of Appeals to follow this Court's mandate to decide jurisdictional questions in international extradition proceedings.

At the very cornerstone of our judicial system is the principle that our courts must look outside themselves for jurisdiction to exercise their powers. When a federal magistrate, with the acquiescence of a Court of Appeals, distorts the unambiguous language of a treaty to give himself unprecedented jurisdiction, his radical departure from the accepted principles of judicial power calls for the exercise of this Court's Rule 19 supervisory power.

The rights of a United States resident, asserted in reliance upon a treaty obligation of the United States, are of sufficient importance to require this Court's review of inferior court decisions erroneously interpreting a treaty so as to vest a committing magistrate with unreviewable subject matter jurisdiction.

It is undisputed that the extent of the action of the Kingdom of Sweden against Assarsson has been to obtain an order of detention from a Swedish District court based on the finding of that Court that Assarsson is "suspected on good

grounds" of committing certain crimes. It is conceded that Assarsson has not been "charged" within the meaning of *Patterson* or of the State Department publication. It is admitted that the Kingdom of Sweden has not charged or formally accused Assarsson of committing arson or any other crime and has not initiated a criminal prosecution against him for such crimes. Further, it is undisputed that, under Swedish law, the order of detention entered against Assarsson constitutes only a determination that, based upon the investigation to that date, there are good grounds to suspect him of committing certain crimes. It authorizes his incarceration only pending the completion of the investigation by the local prosecutor. At the conclusion of this investigation he may be released or formally charged with the commission of these crimes and tried.

Clearly, under the express language of Article I, American courts have no power to order the extradition of a person merely "suspected," but not "charged." Jurisdiction is one of the most fundamental principles of American law. Its abuse should not stand unreviewed.

CONCLUSION

For the reasons stated, the Petitioner respectfully prays that this Honorable Court issue a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,

DAVID P. SCHIPPERS
RICHARD V. HOUPT
SHELDON DAVIDSON
DONALD B. MACKAY
MARILEE ROBERG
Attorneys for Petitioner

Of Counsel:

RICHARD V. HOUPT
SHELDON DAVIDSON
MARILEE ROBERG
PEDERSEN & HOUPT
Suite 3400
180 North LaSalle Street
Chicago, Illinois 60601
(312) 641-6888

DAVID P. SCHIPPERS
DONALD B. MACKAY
SCHIPPERS, LONG & MACKAY
79 West Monroe Street
Suite 400
Chicago, Illinois 60603
(312) 236-9177

APPENDIX A

In the

United States Court of Appeals

For the Seventh Circuit

No. 79-1689

IN THE MATTER OF JAN ALF ASSARSSON,

Relator-Appellant

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 78 C 2175—John F. Grady, *Judge*.

ARGUED DECEMBER 7, 1979—DECIDED OCTOBER 31, 1980

Before FAIRCHILD, *Chief Circuit Judge*, BAUER and WOOD, *Circuit Judges*.

BAUER, *Circuit Judge*. Relator-appellant Jan Alf Assarsson was ordered extradited to Sweden for trial on charges of arson, fraud, and attempted fraud. The district court denied his petition for a writ of habeas corpus. We affirm.

I

Jan Alf Assarsson is a citizen of Sweden. Having lived in this country since 1960, he is, at present, a permanent resident of the United States. Assarsson conducts an import-export business including the purchase of merchandise for resale in European countries.

During 1974-1975, Continental Trading Company ("Continental"), a Swedish corporation of which Assarsson was a director, purchased large quantities of art reproductions from a Spanish firm and stored them in a

public warehouse in Malmo, Sweden. Assarsson insured the stock for fifteen million Swedish crowns on January 9, 1975. The premium was paid on February 13, 1975. On February 18, 1975, the merchandise was destroyed in a fire. Continental filed a claim on March 12, 1975 with the Vegete Insurance Company ("Vegete") for ten million Swedish crowns.

In 1975, another Swedish corporation of which Assarsson was a stockholder and director, Stereo Music Center, A.B. ("Stereo Music"), purchased art reproductions, tape cassettes, iron fittings, and wigs from General Promotions, Inc., a firm operated in the United States by a business associate of Assarsson's. The goods were shipped to and stored in a warehouse in Copenhagen, Denmark. Stereo Music took out insurance early in 1975, but the policy was not effective until the final premium installment was paid on September 18, 1975. On September 19, 1975, fire destroyed the merchandise. On October 3, 1975, Stereo Music filed a claim for thirty-four million Swedish crowns with the Skandia Insurance Company ("Skandia") in Sweden.

Before the September fire, Stereo Music had sold the tape cassettes to Carl Gustaf Bothen, a Swedish businessman. Bothen paid for the cassettes by causing a Letter of Credit in the amount of $190,000 to be issued directly to General Promotions. Almost all of the cassettes sold to Bothen were destroyed in the Copenhagen fire.

An American citizen named Angelo Chionis was arrested just outside the Copenhagen warehouse. Chionis was convicted of the arson and sentenced by a Danish court to ten years in prison. He subsequently made a statement implicating Assarsson in the arson.

After Chionis' arrest and conviction, a two-pronged investigation was undertaken by Swedish authorities: first, to determine whether the Malmo and Copenhagen fires were planned arsons by Continental and Stereo Music (rendering the claims filed with the insurance firms fraudulent); second, to ascertain whether Assarsson or others misled Bothen as to the value of the

cassettes and their potential European selling price to induce him to purchase the cassettes and to issue the Letter of Credit. Neither Vegete nor Skandia has paid the claims.

In March, 1976, Malmo Prosecuting Attorney Ragnar Emanuelsson filed a petition for Assarsson's arrest. The petition accused Assarsson of committing gross arson in two instances (Malmo and Copenhagen), attempted gross fraud in two instances (the claims filed with Vegete and Skandia), and gross fraud (against Bothen). Pursuant to that petition, Malmo District Court Judge Ake Roth issued a Ruling dated April 1, 1976. The ruling asserted that Assarsson was "suspected on good grounds" of committing the crimes and declared Assarsson arrested.

On May 15, 1978, the United States Attorney for the Northern District of Illinois, acting on behalf of the Government of Sweden, filed a verified extradition complaint. It alleged that Assarsson was "duly and legally charged in Sweden with having committed the crimes of arson, fraud and attempted fraud." The complaint further alleged that Sweden had demanded Assarsson's surrender through the appropriate diplomatic channels. J.App. at 13-14.[1]

Magistrate Balog held a hearing on June 30, 1978, pursuant to 18 U.S.C. § 3184.[2] Assarsson contended that

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[1] The 1978 proceeding was the second attempt to extradite Assarsson. The United States Attorney filed a complaint on June 30, 1977. Magistrate Balog dismissed the extradition proceeding on November 8, 1977 because the exhibits failed to include a warrant of arrest or other order of detention issued by the requesting State (Sweden), as required by Article XI of the Treaty. See n.7, *infra*. The magistrate made no findings of fact or conclusions of law as to any other issue. The defect was remedied in the second complaint.

[2] 18 U.S.C. § 3184 provides:

> Whenever there is a treaty or convention for extradition between the United States and any foreign government, any justice or judge of the United States, or any magistrate authorized so to do by a court of the United States, or any judge of a court of record of general

(Footnote continued on following page)

extradition was inappropriate because no "charges" were pending against him under Swedish law. He also argued that the Copenhagen arson was not an extraditable offense under the treaty because it occurred outside Sweden and that there were no reasonable grounds to believe Assarsson guilty of the various alleged offenses. On October 20, 1978, the magistrate denied each of Assarsson's claims and issued an order of commitment directing the United States Marshall to take Assarsson into custody and hold him until his surrender by the United States to Sweden. J.App. at 128-141. The magistrate denied reconsideration of his order on November 21, 1978, ruling that Assarsson had been charged "under the terms of the treaty" even though the time for filing formal criminal charges against Assarsson had been extended until November 1980 by the Swedish court. J.App. at 156.

Assarsson petitioned for a writ of habeas corpus, challenging the legality of the order of extradition on each of the grounds asserted before the magistrate. The district court denied the petition after a hearing and upheld each of the magistrate's determinations.

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[2] *continued*

jurisdiction of any State, may, upon complaint made under oath, charging any person found within his jurisdiction, with having committed within the jurisdiction of any such foreign government any of the crimes provided for by such treaty or convention, issue his warrant for the apprehension of the person so charged, that he may be brought before such justice, judge, or magistrate, to the end that the evidence of criminality may be heard and considered. If, on such hearing, he deems the evidence sufficient to sustain the charge under the provisions of the proper treaty or convention, he shall certify the same, together with a copy of all the testimony taken before him, to the Secretary of State, that a warrant may issue upon the requisition of the proper authorities of such foreign government, for the surrender of such person, according to the stipulations of the treaty or convention; and he shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender shall be made.

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II

Assarsson first challenges the magistrate's determination, upheld by the district court, that he has been charged with a crime. Although ordered arrested by the Swedish court, a formal document, called a "charge" in the Swedish criminal code, has not yet been filed against Assarsson.[3] Assarsson asserts here, as he did before the magistrate and the district court, that since this document has not yet been filed against him, he cannot be extradited.

The magistrate ruled that Assarsson had been charged with crimes "under the terms of the treaty." The district court agreed that

> there is a charge here as that term is used in the treaty. I recognize the existence of a very respectable argument to the contrary, but on the balance, I think that, however dilatory, the procedures that have been initiated by the Swedish Government here indicate that they have accused Mr. Assarsson of these crimes, they have done so in a preliminary way which, under their law, can result in his incarceration under the conditions set forth in their law. It is not a mere case of suspicion; it is a case where probable cause has been found by the Swedish judge; so I believe that there is a pending charge.

Transcript of Proceedings, April 11, 1979, at 91-92; J. App. at 179-80. We do not review the magistrate's determination that Assarsson was "charged" because we hold that it is not reviewable on habeas corpus.

Extradition rulings are not directly appealable. Review is available only by way of a petition for writ of habeas corpus. *Collins v. Miller*, 252 U.S. 364, 369 (1920). Because the writ is not the equivalent of an appeal, it may be granted only in limited circumstances.

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[3] Although termed as such by the parties, the translation of the Swedish Code of Judicial Procedure refers to the document as a summons. THE SWEDISH CODE OF JUDICIAL PROCEDURE, ch. 45 §§ 1, 4, 9 (A. Bruzelius, trans. 1968); J. App. at 122, 123, 124.

> That writ as has been said very often cannot take the place of a writ of error. It is not a means for rehearing what the magistrate already has decided. The alleged fugitive from justice has had his hearing and *habeas corpus* is available only to inquire whether the magistrate has jurisdiction, whether the offense charged is within the treaty and, by a somewhat liberal extension, whether there was any evidence warranting the finding that there was reasonable ground to believe the accused guilty.

Fernandez v. Phillips, 268 U.S. 311, 312 (1925); *Garcia-Guillern v. United States*, 450 F.2d 1189, 1191 (5th Cir. 1971), *cert. denied*, 405 U.S. 989 (1972).

There is no question that, under *Fernandez*, the court may review the magistrate's finding that the offense stated in the complaint is among those listed as an extraditable offense in the treaty. Since arson, fraud, and attempted fraud are extraditable offenses under Article II of the treaty,[4] the court's review would usually stop

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[4] Article II provides:

> Extradition shall be granted, subject to the provisions of this Convention, for the following offenses:
>
> 1. Murder, including infanticide; the killing of a human being, when such act is punishable in the United States as voluntary manslaughter, and in Sweden as manslaughter.
> 2. Malicious wounding; mayhem; willful assault resulting in grievous bodily harm.
> 3. Kidnapping; abduction.
> 4. Rape; abortion; carnal knowledge of a girl under the age specified by law in such cases in both the requesting and requested State.
> 5. Procuration, defined as the procuring or transporting of a woman or girl under age, even with her consent, for immoral purposes, or of a woman or girl over age, by fraud, threats, or compulsion, for such purposes with a view in either case to gratifying the passions of another person; profiting from the prostitution of another.
> 6. Bigamy.
> 7. Robbery; burglary, defined to be the breaking into or entering either in day or night time, a house,

(Footnote continued on following page)

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[4] *continued*

office, or other building of a government, corporation, or private person, with intent to commit a felony therein.

8. Arson.

9. The malicious and unlawful damaging of railways, trains, vessels, aircraft, bridges, vehicles, and other means of travel or of public or private buildings, or other structures, when the act committed shall endanger human life.

10. Piracy; mutiny on board a vessel or an aircraft for the purpose of rebelling against the authority of the Captain or Commander of such vessel or aircraft; or by fraud or violence taking possession of such vessel or aircraft.

11. Blackmail or extortion.

12. Forgery, or the utterance of forged papers; the forgery or falsification of official acts of government, of public authorities, or of courts of justice, or the utterance of the thing forged or falsified.

13. The counterfeiting, falsifying or altering of money, whether coin or paper, or of instruments of debt created by national, state, provincial, or municipal governments, or of coupons thereof, or of bank-notes, or the utterance or circulation of the same; or the counterfeiting, falsifying or altering of seals of state.

14. Embezzlement by public officers; embezzlement by persons hired or salaried, to the detriment of their employers; larceny; obtaining money, valuable securities or other property by false pretenses, or by threats of injury; receiving money, valuable securities or other property knowing the same to have been embezzled, stolen or fraudulently obtained.

15. Making use of the mails or other means of communication in connection with schemes devised or intended to deceive or defraud the public or for the purpose of obtaining money under false pretenses.

16. Fraud or breach of trust by a bailee, banker, agent, factor, trustee or other person acting in a fiduciary capacity; or director or member or officer of any company.

17. Soliciting, receiving, or offering bribes.

18. Perjury; subornation of perjury.

19. Offenses against the laws for the suppression of slavery and slave trading.

20. Offenses against the bankruptcy laws.

21. Smuggling, defined to be the act of willfully and knowingly violating the customs laws with intent to

(Footnote continued on following page)

there. But Assarsson argues that the magistrate's finding of formal "charges" is also reviewable under the second *Fernandez* category. He argues that the

> existence of a "charge" falls within the scope of habeas corpus review since an extradition Magistrate cannot determine whether an extraditable offense under Article II has been charged unless it is first determined that the Relator-appellant has in fact been properly "charged" with committing such a crime.

Brief for Appellant at 9-10.[5]

Assarsson in effect argues that extradition is conditional on the existence of formal charges. Assarsson agrees, however, that *Fernandez* defines the scope of review. Under *Fernandez*, we may review only whether "the offense charged is within the treaty." 268 U.S. at 312. We may therefore review only those conditions which preclude extradition for offenses which are otherwise extraditable. Any such conditions must come from the treaty itself. For example, in *Brauch v. Raiche*,

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[4] *continued*

defraud the revenue by international traffic in merchandise subject to duty.

22. Offenses against the laws relating to the traffic in, use of, or production or manufacture of, narcotic drugs or cannabis.

23. Offenses against the laws relating to the illicit manufacture or traffic in poisonous chemicals or substances injurious to health.

24. The attempt to commit any of the above offenses when such attempt is made a separate offense by the laws of the Contracting States.

25. Participation in any of the above offenses.

Convention on Extradition, Oct. 24, 1961, United States-Sweden (hereinafter referred to as "treaty"), art. II, T.I.A.S. No. 5496.

[5] It is unclear whether Assarsson relies on the use of the word "charged" in *Fernandez* or in the treaty. We must construe his argument to be based on interpretation of the treaty, however, because the courts cannot expand the obligations of another nation under a treaty. *See Grin v. Shine*, 187 U.S. 181, 191-92 (1902).

618 F.2d 843 (1st Cir. 1980), the United States-Great Britain treaty permitted extradition for offenses "within any of the descriptions listed in the Schedule annexed to this Treaty . . . or any other offense, [only] if: . . . the offense constitute[d] a felony under the law of the United States of America." *Id.* at 847. The treaty thus imposed a requirement of double criminality. Unless the offense was criminal in both jurisdictions, therefore, the "offense charged" could not be "within the treaty." *Fernandez v. Phillips*, 268 U.S. at 312. The court in *Brauch* could therefore properly review, on habeas corpus, the relator's contention that there was a lack of double criminality.

The existence of formal charges can be reviewable, then, only if the treaty itself conditions extradition for the offenses listed in Article II on the existence of formal charges. The United States-Sweden treaty does not so condition extradition.

Article II of the treaty, as we have noted, lists the offenses for which extradition may be granted. Article III of the treaty lists two conditions. It provides:

> ARTICLE III
>
> 1. The requested State shall, subject to the provisions of this Convention, extradite a person charged with or convicted of any offense enumerated in Article II only when both of the following conditions exist:
>
> (a) The law of the requesting State, in force when the offense was committed, provides a possible penalty of deprivation of liberty for a period of more than one year; and
>
> (b) The law in force in the requested State generally provides a possible penalty of deprivation of liberty for a period of more than one year which would be applicable if the offense were committed in the territory of the requested State.
>
> 2. When the person sought has been sentenced in the requesting State, the punishment awarded must have been for a period of at least four months.

Convention on Extradition, Oct. 24, 1961, United States-Sweden (hereinafter referred to as "treaty"), art. III, T.I.A.S. No. 5496 (emphasis added).

Other articles impose additional conditions: Article IV (extraterritorial offenses, see discussion at 14-17, *infra*); Article V ("purely military" and "political offenses" exempted from extraditable offenses); Article VIII (death penalty cases). The filing of formal charges is not stated anywhere as a prerequisite to extradition. The treaty does not state "extradition may only be granted for those offenses for which formal charges have been filed against the person sought" or anything remotely akin to that. Because the treaty does not so limit the class of extraditable offenses, we may not review the magistrate's determination that Assarsson was charged "under the terms of the treaty."

Assarsson seeks to find a so-called "substantive" requirement that "charges" be filed in other parts of the treaty. Article I of the treaty provides:

ARTICLE I

> Each Contracting State undertakes to surrender to the other, subject to the provisions and conditions laid down in this Convention, those persons found in its territory who have been *charged with or convicted* of any of the offenses specified in Article II of this Convention committed within the territorial jurisdiction of the other, or outside thereof under the conditions specified in Article IV of this Convention; provided that such surrender shall take place only upon such evidence of criminality as, according to the laws of the place where the person is sought shall be found, would justify his commitment for trial if the offense had been there committed.

(Emphasis added.)

The word "charge" is thus used in contrast to "convicted"; that is, persons convicted or charged with cer-

tain crimes may be extradited.[6] The term is used in the generic sense only to indicate "accused." Assarsson argues that the language in the United States-Sweden treaty creates an additional "substantive" requirement that a formal document called a "charge" be filed with the extradition request. Assarsson's argument converts the treaty's language that individuals be "charged," a verb, into a requirement that "charges," a noun, be filed. It is based on semantics, not substance.

In the first place, the treaty itself lists the substantive requirements that must be satisfied to grant extradition. The treaty requires, in Article XI, that certain certified documents accompany the request.[7] These include a "du-

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[6] "Charged" is also used in the following articles of the treaty:

ARTICLE XII

1. The Contracting States may request, through the diplomatic channel, the provisional arrest of a person, provided that the offense for which he is sought is one for which extradition shall be granted under this Convention. The request shall contain:

(a) A statement of the offense with which the person sought is charged or of which he has been convicted;

(b) A description of the person sought for the purpose of identification;

(c) A statement of his whereabouts, if known; and

(d) A declaration that there exist and will be forthcoming the relevant documents required by Article XI of this Convention.

2. If, within a maximum period of 40 days from the date of the provisional arrest of the person in accordance with this Article, the requesting State does not present the formal request for his extradition, duly supported, the person detained will be set at liberty and a new request for his extradition will be accepted only when accompanied by the relevant documents required by Article XI of this Convention.

Treaty, art. XII. "Charged" is also used in Article XI, *see* n.7 *infra*.

[7] A request for extradition of a person "merely charged" with an offense must be supported by the following documents:

(Footnote continued on following page)

ly certified or authenticated copy of the warrant of arrest or other order of detention." If the parties had wished to include the additional requirement that a formal document called a charge be produced, they could have so provided. Assarsson replies that the requirements in Article XI are only "evidentiary," not "substantive." Even viewed as such, his argument still fails. For no better evidence of a "substantive" requirement of a charge exists than a copy of the "charge" itself. Since the parties chose not to require production of the charge document, we can easily infer that they did not require the "substance" of a charge either.

Courts have frequently addressed claims that the offense charged is not within the treaty because of some condition imposed by the treaty. *E.g. Brauch v. Raiche*, 618 F.2d at 847 (dual criminality); *see also Ziyad Abu*

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[7] *continued*

(1) A duly certified or authenticated copy of the warrant of arrest or other order of detention issued by the competent authority of the requesting State.

(2) Any depositions, record of investigation, or other evidence upon which such warrant or order may have been issued.

(3) Such other evidence or proof as may be deemed competent in the case.

(4) The documents must include a precise statement of the criminal act with which the person sought is charged or of which he has been convicted and the place and date of the commission of the criminal act. The documents must be accompanied by an authenticated copy of the texts of the applicable laws of the requesting State including the laws relating to the limitation of the legal proceeding or the enforcement of the penalty for the offense for which the extradition of the person is sought, and data or records which will prove the identity of the person sought as well as information as to his nationality and residence.

(5) The documents in support of the request for extradition shall be accompanied by a duly certified translation thereof into the language of the requested State.

Treaty, art. XI.

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Eain v. Wilkes, No. 80-1487, *appeal pending* (7th Cir.) (whether "political offense" limitation is reviewable on habeas corpus). But no case disclosed by the parties or our research construes the word "charged" as appellant suggests. Indeed, similar contentions have been expressly rejected as not reviewable on habeas corpus. The Fifth Circuit flatly held in *Garcia-Guillern v. United States*, 450 F.2d at 1193 n.1, that the

> contention that [the person whose extradition is sought] has never been properly or legally charged with a crime in accordance with the treaty is also not appropriate for consideration. A petition for the writ of habeas corpus is not to be used as a means for rehearing what a committing court has already decided.

Accord, Freedman v. United States, 437 F. Supp. 1252, 1258 (N.D. Ga. 1977).[8] *See also United States v. Marasco*, 325 F.2d 562, 565 (2d Cir. 1963), *cert. denied sub nom. Petrushansky v. Marasco*, 376 U.S. 952 (1964) (while court views provision in Mexican Constitution requiring formal complaint in some cases as "primarily for the courts of that country to interpret," oral statements of Mexican judge "would seem to satisfy" the requirement).

Assarsson further argues that, unless the treaty is read to require the production of formal Swedish charges, he can be extradited on mere suspicion. Appellant's Reply Brief at 9. But the treaty plainly provides that the sufficiency of the evidence underlying the extradition is to be judged by American law. Treaty, art. I. As will be discussed *infra* at 17-19, probable cause is necessary to extradite. A formal document, issued by the Swedish government in addition to those which the treaty already requires, will not alter our review of probable cause.

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[8] *Freedman* relied on 18 U.S.C. § 3190 in concluding that the issue was not reviewable. The text of the statute is reproduced at 17-18, *infra*. The court agreed that the United States' certification that the " 'warrant contained in the paper still exists . . . [was] binding upon this Court to prove the existence of the charge.' " 437 F. Supp. at 1258. While we agree with the result, we do not concur with the *Freedman* reasoning.

The court's refusal to review compliance with foreign criminal procedure is not a formalistic application of outmoded law. Rather, the narrow scope of review is based on respect for the sovereignty of other nations. While our courts should guarantee that all persons on our soil receive due process under our laws, that power does not extend to overseeing the criminal justice system of other countries. This respect is embodied in the procedural framework of international extradition, which "gives to the demanding country advantages most uncommon to ordinary civil and criminal litigation." *First National City Bank of New York v. Aristeguieta*, 287 F.2d 219, 226 (2d Cir. 1960).

We are also not expected to become experts in the law of foreign nations. *See Grin v. Shine*, 187 U.S. 181 (1902). The treatment of this case below demonstrates the dangers inherent in determining the applicability of foreign law. The magistrate held an extensive hearing, complete with experts, exhibits, and much other evidence, to try to determine whether there was compliance with Swedish law. We often have difficulty discerning the laws of neighboring States, which operate under the same legal system as we do; the chance of error is much greater when we try to construe the law of a country whose legal system is much different from our own. The possibility of error warns us to be even more cautious of expanding judicial power over extradition matters.

The review permitted by *Fernandez* is workable and protective of the relator's rights under United States law. Since we decide that the magistrate's determination that Assarsson was properly charged is not within the scope of review on habeas corpus, we do not reach the merits of appellant's argument.

III

Assarsson's next challenge is that the Copenhagen arson is not an extraditable offense under the treaty. If it is not, he may not be tried for the Copenhagen arson in Sweden under the principle of specialty. *See Shapiro v.*

Ferrandina, 478 F.2d 894, 905-07 (2d Cir.), *cert. dismissed*, 414 U.S. 884 (1973); W. Bishop, INTERNATIONAL LAW 577 (3d ed. 1971).

The treaty, in Article I, anticipates that some extraterritorial crimes are extraditable. Article I provides:

> Each Contracting State undertakes to surrender to the other . . . those persons . . . who have been charged with or convicted of . . . offenses . . . committed . . . outside [the territorial jurisdiction of the other] under the conditions specified in Article IV.[9]

Article IV, section 2 of the treaty defines the conditions:

> When the offense has been committed outside the territorial jurisdiction of the requesting State, the request for extradition need not be honored unless the laws of the requesting State and those of the requested State authorize prosecution of such offense under corresponding circumstances.

We read the language as governing extradition under two different sets of circumstances: first, if the extraterritorial offense charged is prosecutable under the laws of both countries, the United States *must* extradite the accused; second, if the offense is prosecutable only under the laws of one nation, extradition is discretionary.

Assarsson argues that the second alternative is not supported by the treaty's language and that only "dual criminality" will support extradition for extraterritorial offenses. Since the United States generally does not prosecute citizens for crimes committed outside our borders, *see Schooner Exchange v. McFadden*, 7 Cranch

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[9] "Territorial jurisdiction" is defined in the treaty as:

> [T]erritory, including territorial waters, and the airspace thereover, belonging to or under the control of one of the Contracting States; and vessels and aircraft belonging to one of the Contracting States or to a citizen or corporation thereof when such vessel is on the high seas or such aircraft is over the high seas.

Treaty, art. IV § 3.

116 (U.S. 1812), he argues extradition is improper except for those few crimes for which the United States authorizes extraterritorial prosecution. We disagree. That the offense charged is not a crime in the United States is not necessarily a bar to extradition. "[I]f the extradition treaty so provides, the United States may surrender a fugitive to be prosecuted for acts which are not crimes within the United States." *Gallina v. Fraser*, 278 F.2d 77, 79 (2d Cir.), *cert. denied*, 364 U.S. 851 (1960); *Factor v. Laubenheimer*, 290 U.S. 276, 290-91 (1933). The treaty language therefore controls. The plain language of this treaty indicates that the executive has discretion to extradite for extraterritorial offenses. Were the treaty language here "shall not . . . unless" we might agree that discretion to extradite was lacking. But "need not . . . unless" connotes discretion.

Assarsson's interpretation in effect converts "need not" to "shall not." The treaty itself demonstrates that the parties were able to state "shall not" when they meant it. The most telling example is presented in the very next article, Article V, which states that "extradition *shall not* be granted" for certain offenses.

Assarsson's reliance on *Valentine v. United States ex rel. Neidecker*, 299 U.S. 5 (1936), is misplaced. The treaty there stated that "[n]either of the contracting Parties shall be bound to deliver up its own citizens." *Id.* at 7. Although holding the language to be a denial of authority to extradite United States citizens, the Court emphasized that treaties usually conferred express discretion to extradite nationals of the requested State. Since the treaty was unusual in not expressly granting discretion, the Court could properly infer that discretion was withheld. In addition, the "neither . . . shall be," language stood without qualification in the *Valentine* treaty. Without the condition set forth here ("unless the laws . . ."), the *Valentine* language is closer to "shall not" in connotation.

Valentine itself states that discretion to extradite may be granted by the terms of a treaty. 299 U.S. at 11. The treaty here, by its language, grants discretion to extradite for extraterritorial offenses. Since we hold that

the United States may grant the extradition request, we do not rule on the other ground relied on by the magistrate, *i.e.*, that the offenses were punishable under corresponding United States or Illinois law.

IV

A

Assarsson finally challenges the magistrate's findings that there was probable cause to extradite him for each of the charged offenses. Assarsson first asserts that the statement of Chionis, the convicted arsonist in the Copenhagen fire, is incompetent evidence to support the magistrate's determination.

Chionis referred to the initiator of the scheme as both Jan Jacobsson and Jan Assarsson and identified him as a Swedish businessman living in Chicago. Chionis also stated that he positively identified Assarsson from sixteen photographs shown to him by Swedish police officials. The photograph was not attached to the statement or included in any other government exhibit. The district court found that Chionis' statement was sufficiently corroborated by other evidence, notwithstanding the lack of a photograph. Assarsson contends that the failure to provide a photograph or any physical description renders Chionis' statement incompetent, and that without the Chionis statement there was no probable cause.

The admissibility of evidence in an extradition case is governed by federal law. Section 3190 of Title 18, United States Code, provides that

> [d]epositions, warrants or other papers or copies thereof offered in evidence upon the hearing of any extradition case shall be received and admitted as evidence on such hearing for all the purposes of such hearing if they shall be properly and legally authenticated so as to entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party shall have escaped, and the certificate of the principal

> diplomatic or consular officer of the United States resident in such foreign country shall be proof that the same, so offered, are authenticated in the manner required.

Assarsson does not contest that he is the person sought for arrest or that he is the person ordered detained in Sweden. Brief for Appellant at 33 n.3. This fact distinguishes the cases cited by Assarsson where the identity of the person seized in the requested State was at issue. *See, e.g. Raftery ex rel. Fong v. Bligh*, 55 F.2d 189, 193 (1st Cir. 1932).

Assarsson does not contest the authentication of the documents. We agree that, once certified under 18 U.S.C. § 3190, the statement was properly received into evidence. *See Galanis v. Pallanck*, 568 F.2d 234, 240 (2d Cir. 1977); *Shapiro v. Ferrandina*, 478 F.2d at 903 (certification of United States diplomatic officials is conclusive proof that the document is "properly and legally" authenticated and thus admissible).

The objection to the evidence goes to its weight, not its admissibility. *See Shapiro v. Ferrandina*, 478 F.2d at 902. As the court said in *Peroff v. Hylton*, 542 F.2d 1247, 1249 (4th Cir. 1976), *cert. denied*, 429 U.S. 1062 (1977), another case involving extradition to Sweden,

> [i]t may be that on the full trial Peroff may be able to submit substantial proof that another rather than he was the perpetrator of the fraud, but that is a matter for exploration during the trial in Sweden and not for extensive evidentiary inquiry during the extradition hearing.

B

Assarsson finally contests the sufficiency of the evidence adduced against him. The magistrate found that "*prima facie* evidence contained in Government's Exhibits are legal and competent as well as sufficient to sustain" the five charges alleged against Assarsson. J. App. at 40. The district court agreed that "there is probable cause to believe that the defendant Assarsson

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is guilty of each of the charges contained in the demanding papers." J. App. at 182.

We need not set out the evidence in detail to affirm the lower court's conclusion. The evidence contained in the government's exhibits demonstrates Assarsson's close connection with the arsons and the frauds. He ran the two companies involved, and both companies paid insurance premiums only days before the two arsons. The evidence indicates that Assarsson had some relationship with the sellers of the merchandise and that some of the merchandise was overvalued and overinsured. Assarsson also arranged the letter of credit transaction with Bothen.[10] Arson was proved in the Copenhagen fire and is a possibility in the Malmo fire. On habeas corpus, we must affirm if there was "any competent evidence tending to show probable cause." *Garcia-Guillern v. United States*, 450 F.2d at 1192; *Fernandez v. Phillips*, 268 U.S. at 312; *Freedman v. United States*, 437 F. Supp. at 1265. We are convinced that the evidence satisfies this test. Of course, our decision does not constitute a final judgment on the guilt or innocence of the accused. *Fernandez v. Phillips*, 268 U.S. at 312; *United States ex rel. Hughes v. Gault*, 271 U.S. 142, 150 (1926). That is a responsibility of the Swedish courts.

The order of the district court is

AFFIRMED.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

[10] The Swedish prosecutor charged that the intention behind the agreement was to finance the purchase of the goods, shipping; storage, hiring of staff, and payment of compensation to the arsonists until the insurance money from the Skandia Insurance Company was paid. Petition for Arrest, March 5, 1977; J. App. at 22.

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APPENDIX B

UNITED STATES COURT OF APPEALS

For the Seventh Circuit
Chicago, Illinois 60604

December 23, 1980.

Before
Hon. THOMAS E. FAIRCHILD, Chief Circuit Judge
Hon. WILLIAM J. BAUER, Circuit Judge
Hon. HARLINGTON WOOD, JR., Circuit Judge

IN THE MATTER OF:
JAN ALF ASSARSSON,
Relator-Appellant

No. 79-1689

On Petition for Rehearing and Suggestion for Rehearing En Banc.

ORDER

On consideration of the petition for rehearing and suggestion for rehearing en banc filed in the above-entitled cause by Relator-Appellant Jan Alf Assarsson, no judge in active service has requested a vote thereon, and all of the judges on the original panel have voted to deny a rehearing. Accordingly,

IT IS ORDERED that the aforesaid petition for rehearing be, and the same is hereby, DENIED.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN THE MATTER OF: **JAN ALF ASSARSSON** **CHARGED UNDER TITLE 18 UNITED STATES CODE, SECTION 3184 AS A FUGITIVE FROM THE JUSTICE OF SWEDEN.**	**No. 78 M 101**

MEMORANDUM

This matter comes before the Magistrate on the motion of the Respondent, Jan Alf Assarsson, filed June 30, 1978 to dismiss all extradition proceedings and discharge him. The parties have briefed the issues.

On May 15, 1978,[1] Gary S. Shapiro, Special Attorney with the United States Department of Justice, was sworn on oath to a complaint[2] wherein he stated that he was acting on behalf of the Government of Sweden who sought to extradite Jan Alf Assarsson.

On May 16, 1978, the Respondent appeared in courtroom 2494 at 219 South Dearborn Street, Chicago, Illinois, with his attorneys, David P. Schippers and Sheldon Davidson.

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[1] An amended complaint was filed in open court on June 30, 1978.

[2] Although a summons was ordered to issue on May 15, 1978, the Respondent appeared in open court and signed a bond on May 16, 1978, prior to the issuance of any process.

I.

Paragraphs 15 and 16 of the motion to dismiss contesting the Magistrate's jurisdiction are identical to paragraphs 15 and 16 of the Respondent's May 26, 1978 motion to dismiss to which this Magistrate ruled on May 30, 1978 that

> "At the present time a hearing in accordance with Title 18, Section 3184 has been set for June 26, 1978.
>
> "It appears that Paragraphs 1 to 14, 17 and 18 of Respondent's motion raises issues as to the legal and factual insufficiency of the Government's case. At the present time this extradition record is void of any evidence or other legally authenticated documents upon which the Government rests its case.
>
> "I find that until after the Section 3184 hearing or the Government in some other manner waives its right to introduce legal documents at a hearing and the Respondent waives any Title 18, Chapter 209 objections to such a procedure, a ruling on the legal and factual sufficiency is premature.
>
> "The motion of Respondent to dismiss on the grounds raised in Paragraphs 1 to 14, 17 and 18 is denied as being premature.
>
> "Respondent's motion to dismiss as to Paragraph 15 is denied. (See General Order dated July 15, 1977 and designation of Duty Magistrate for the year 1978.) Respondent's motion to dismiss as to Paragraph 16 for lack of jurisdiction over the person of the Respondent is denied on the grounds that the Respondent voluntarily surrendered in open court to this Magistrate on May 16, 1978."

No arguments are made in Respondent's brief in support of a change in that ruling.

II.

The Respondent next contends that there has been no Warrant of Arrest or other order of detention as required by Article XI, Section 1(b) of the treaty.[3] It is clear to this Magistrate from documents[4] introduced on June 30, 1978 and testimony given that day that an order of detention[5] has been presented to this Magistrate.

The Respondent further contends that this Magistrate is bound by his prior ruling that "no order of arrest or order of detention had been presented." The prior discharge of this Respondent does not bar this proceeding as he may be rearrested and compelled to submit to a second examination. *Collins* v. *Loisel,* 262 U. S. 426, 67 L. Ed. 1062, 43 S. Ct. 618 (1922); *Ex parte Schorer,* 195 F. 334 (E. D. Wis. 1912); *Muller's Case,* Fed. Cas. 9913.

III.

The Respondent further contends that there is no competent evidence of the official request by Sweden for Respondent's extradition as Government's Exhibit 10 was not authenticated under the provisions of Title 18, Section 3190.

Section 3190 only applies "for determining what shall be admitted to show probable cause . . . ." *In re Edmonson,* 352 F. Supp. 22 (D.Minn. 1972).

This Magistrate did not consider Exhibit 10 in determining whether or not probable cause existed.

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[3] Government's Exhibit 5.

[4] Judge Ake Roth's order of April 1, 1976, page 8, Government's Exhibit 1, Nils R. Larsson's affidavit of November 30, 1977 attached to Government Exhibit 10.

[5] The testimony given on November 8, 1977 by Gerhard Kelter did not convince this Magistrate that the witness was an expert in an international extradition or an expert in interpreting an order of Judge Roth as an order of detention.

IV.

The Respondent states that the treaty requires an individual to be "charged" before he can be extradited and contends that he has never been formally charged with, or convicted of, a crime under Swedish law and that this formal charging occurs at a time after the order of detention issues. He further states that the proceedings which caused the issuance of the order of detention are not charges under Swedish law; therefore, he is not an individual subjected to extradition under Article I of the treaty.

The Respondent is more than merely suspected of a crime. In Sweden, criminal proceedings have begun on "good grounds". If the proceedings which are now pending and upon which the order of detention was issued are not sufficient "charges" under the treaty, then it is a meaningless statement in the treaty for the High Contracting Parties to require the production of an order of detention which would issue without a subject being "charged" as required by the treaty. The treaty requirement that an order of detention be produced is not meaningless, therefore, the proceedings underlying the order of the detention are sufficient "charges" under the terms of the treaty.

V.

The Respondent claims that the High Contracting Parties have failed to comply with Article XI, Section 2 of the treaty, which states:

> "The documents specified in this Article must include a precise statement of the criminal act with which the person sought is charged or of which he has been convicted, and the place and date of the commission of the criminal act."

Appendix A to Government Exhibit 1 and 7 contain the following brief, precise descriptions of the criminal acts for which extradition is sought:

> "I. Assarsson is suspected on good grounds for instigating gross arson on February 18th, 1975 and for attempted gross fraud on March 12th, 1975 in Malmo, Sweden."
>
> "II. Assarsson is suspected on good grounds for instigating gross arson on September 19th, 1975 in Copenhagen, Denmark, and for attempted gross fraud in Malmo, Sweden on October 3rd, 1975."
>
> "III. On April 30th, 1975, Jan Assarsson in Gothenburg was guilty of gross fraud against Carl Gustaf Bothen, as being the representative for C. C. Bothen AB."

Each of these statements is then followed by several pages of detailed supporting information.

These statements fairly apprise the Respondent of the charges and are sufficient compliance with the treaty.

VI.

The Respondent next asserts that the statements of Angelo Chionis (Government Exhibit 6 and 9) are not competent evidence for use in this extradition proceeding for there is no evidence that they were reviewed by a Swedish Court.

Article I of the Convention provides that an extradition surrender will be based "... only upon such evidence of criminality, as according to the laws of the place where the person shall be found, would justify his commitment for trial if the offense had been there committed." Under this treaty and applicable U. S. case law, the law of the State of Illinois determines the sufficiency of the evidence, while federal law determines admissibility.[6] "Thus unsworn statements of absent

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[6] *Collins* v. *Loisel, supra; Shapiro* v. *Ferrandina,* 478 F. 2d 894, 902 (2d Cir. 1972); *United States ex rel. Sakaguchi* v. *Kaulukukui,* 520 F. 2d 726, 730-31 (9th Cir. 1975).

witnesses may be acted upon by the committing magistrate, although they could not have been received by him under the law of the State on preliminary examination." *Collins* v. *Loisel, supra.*

The admissibility of evidence to determine probable cause is governed by Section 3190 of Title 18, United States Code. The Section provides that documents which are authenticated "so as to entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party shall have escaped" shall be received into evidence. It further provides that such authentication may be proven by the certificate of the principal diplomatic or consular officer of the United States resident in the foreign country. Respondent has not challenged the sufficiency of the certification or, derivatively, the authentication. He can cite no authority in the federal law to support his assertion that a statement taken under oath and properly authenticated under Section 3190 should be excluded in an extradition hearing. Similar statements introduced pursuant to similar extradition treaties and similarly authenticated are routinely received in evidence—without requiring a review by the foreign tribunal.[7]

Respondent's argument that there must be some additional showing that the proffered evidence is "competent in the case" would make the language of Section 3190 meaningless by requiring further certification or proof to ensure admissibility. The law has been established that:

> "Under [§ 3190], the prosecution may rely upon the certificate of the diplomatic or consular officer, which, if in conformity with the statute, is of itself absolute proof that the papers so certified are receivable in the foreign country in proof of criminality."

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[7] *Grin* v. *Shine,* 187 U.S. 181, 192-193 (1902); *O'Brien* v. *Rozman,* 554 F. 2d 780, 782-783 (6th Cir. 1977); *Shapiro* v. *Ferrandina, supra,* pp. 901-904; *United States* v. *Galanis,* 429 F. Supp. 1215, 1226-1229 (D. Conn. 1977).

United States v. *Galanis, supra,* citing *In re McPhun,* 30 F. 57 (C. C. S. D. N. Y. 1887).[8]

Since Respondent does not challenge the certification and authentification of the various government exhibits[9] nor does he raise federal evidentiary grounds which would justify their exclusion, they constitute competent evidence within the terms of the Convention and are thereby receivable in an extradition hearing for the purpose of establishing probable cause.

VII.

The Respondent has generally challenged the evidentiary use of the statements and arguments of the Swedish prosecutor, Ragnar Emanuelsson, and contends that they cannot be considered by the Magistrate. As hearsay is admissible in preliminary hearings under federal law, Rule 1101(d)(3), Federal Rules of Evidence; Rule 5.1(a), Federal Rules of Criminal Procedure, many of Emanuelsson's statements would likewise be admissible. Many of Mr. Emanuelsson's statements were submitted to and relied upon by Judge Roth. Respondent's contention is more appropriately addressed to the weight that should be placed on those statements.

VIII.

The Respondent contends that "instigating gross arson" is not an extraditable offense under the terms of the treaty between the United States of America and the Kingdom of Sweden; although, "attempting gross arson" would be an extraditable offense. He argues that instigating gross arson and attempting gross arson are different offenses. Respondent's argument is technical and his view seems to be that the treaty must be strictly construed. The Supreme Court, however, has stated:

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[8] See, *Ex parte Schorer,* 197 F. 67 (E. D. Wis. 1912); *In re Fowler,* 4 F. 303 (C.C.S.D.N.Y. 1880).

But see, *Shapiro* v. *Ferrandina, supra,* where the Court in *dicta* inferred that where the certification is complete, it might allow evidence that the documents involved would not have been admissible in the requesting nation.

[9] Respondent does challenge Government Exhibit 10.

> "In choosing between conflicting interpretations of a treaty obligation, a narrow and restricted construction is to be avoided as not consonant with the principles deemed controlling in the interpretation of international agreements. Considerations which should govern the diplomatic relations between nations, and the good faith of treaties, as well, require that their obligations should be liberally construed so as to effect the apparent intention of the parties to secure equality and reciprocity between them. For that reason if a treaty fairly admits of two constructions, one restricting the rights which may be claimed under it, and the other enlarging it, the more liberal construction is to be preferred."

Factor v. *Laubenheimer,* 290 U. S. 276, 293-4 (1933). It has been the Supreme Court's consistent position that treaties are to be liberally construed.[10]

This Magistrate fails to see any legally significant difference between the terms "instigating gross arson" and "attempting gross arson" as they are applied under the treaty to this extradition proceedings.

IX.

The Respondent further contends that the High Contracting Parties have failed to supply the Court with a full and authenticated copy of the test of applicable laws of the requesting State as required by Article XI, Section 2, of the treaty.

A copy of the applicable laws are attached in Government Exhibit 1, next to the first 15-page document, and Government Exhibit 8.

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[10] *Valentine* v. *United States,* 299 U. S. 5, 10 (1936); *Jordan* v. *Tashiro,* 278 U. S. 123, 127 (1928); *Grin* v. *Shine, supra* at 184-185; *Tucker* v. *Alexandroff,* 183 U. S. 424, 437 (1902); *Rice* v. *Ames,* 180 U. S. 371, 374 (1902); *In re* Ross, 140 U. S. 453, 475 (1891).

X.

The Respondent next asserts that because the United States could not charge him with a substantive offense for the Copenhagen arson, the "dual criminality" provision of the Convention has not been met and Assarsson cannot therefore be extradicted for the offense.

> Article IV, Section 2 of the Convention states:
>
> When the offense has been committed outside the territorial jurisdiction of the requesting State, the request for extradition need not be honored unless the laws of the requesting State and those of the requested State authorize prosecution of such offense under corresponding circumstances.

The language of the Convention is permissive. It does not bar the United States from acceding to such a request; it simply does not impose a legal duty upon the United States to surrender a fugitive under such circumstances. Since this language permits such a surrender, it can hardly be relied upon by Respondent to bar his extradition for this offense.[11]

More importantly, the Copenhagen arson is a crime both in Sweden and in the United States. Chapter 2, Section 2 of the Penal Code of Sweden (Government Exhibit 8) provides in pertinent part:

> For a crime which has been committed outside the Realm, judgment shall be given according to Swedish law, and in a Swedish court of law, if the crime has been committed
>
> 1. by a Swedish citizen or by an alien with a permanent residence in Sweden.

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[11] Factor v. Laubenheimer, *supra*.

Title 18, United States Code, Section 956 provides:

> (a) If two or more persons within the jurisdiction of the United States conspire to injure or destroy specific property situated within a foreign country and belonging to a foreign government or to any political subdivision thereof with which the United States is at peace, or any railroad, canal, bridge, or other public utility so situated, and if one or more such persons commits an act within the jurisdiction of the United States to effect the object of the conspiracy, each of the parties to the conspiracy shall be fined not more than $5,000 or imprisoned not more than three years, or both.[12]

It is not necessary that the offense charged be technically identical to one chargeable in the asylum nation, only that "an identical offense is generally recognized as criminal in both countries." *Factor* v. *Laubenheimer, supra.*[13] As arson is a criminal offense both in the United States and Sweden, and as both countries have criminal statutes which authorize prosecution of such an offense under corresponding circumstances, the Copenhagen arson is an extraditable offense.

The motion to dismiss the proceeding is DENIED.

XI.

This Magistrate appreciates and respects the thoroughness within which counsel for the Respondent have argued in detail the weight to be given each statement and other items of evidence.

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[12] See Government Exhibit 3 as to proof that the warehouse burned was owned by the Copenhagen Freeport and belonged "to a foreign government or to any political subdivision thereof. . . ."

[13] See also, *Jhirad* v. *Ferrardina,* 355 F. Supp. 1155, 1160-1161 (S. D. N. Y. 1973), reversed and remanded on other grounds, 486 F. 2d 442 (2d Cir. 1973).

After reviewing the Exhibits and testimony of record and carefully scrutinizing all the evidence of criminality and placing appropriate weight on each relevant item and further realizing that the consequences of an unjust extradition are very serious, I find that:

1. the Jan Alf Assarsson named in Magistrate's Complaint No. 78 M 101 and now appearing before me is the same accused and against whom charges are pending in Sweden;

2. the prima facie evidence contained in Government's Exhibits are legal and competent as well as sufficient to sustain:

a. the charge of suspected on good grounds for instigating gross arson on February 18th, 1975 and for attempted gross fraud on March 12th, 1975 in Malmo, Sweden;

b. the charge of suspected on good grounds for instigating gross arson on September 19th, 1975 in Copenhagen, Denmark, and for attempted gross fraud in Malmo, Sweden on October 3rd, 1975;

c. the charge of on April 30th, 1975, Jan Assarsson in Gothenburg was guilty of gross fraud against Carl Gustaf Bothen, as being the representative for G. C. Bothen AB.

All the charges being under the criminal code of Sweden. If these events as they have been alleged had taken place in this jurisdiction, I would enter a finding that there was probable cause to believe that there have been violations of the law of this jurisdiction committed by Jan Alf Assarsson and would hold him for trial. I, therefore, enter a finding that there is a probable cause to believe that there have been violations of the criminal code of Sweden as alleged (in a, b, c above) committed by this Respondent.

A final commitment for Jan Alf Assarsson will issue to the United States Marshal to take custody of Jan Alf Assarsson for his surrender to Swedish authorities.

ENTER:_____

JAMES T. BALOG
United States Magistrate

DATE; October 20, 1978

cc: SHELDON DAVIDSON
Pedersen & Houpt
180 N. LaSalle St., Rm. 3400
Chicago, Illinois 60601

DAVID P. SCHIPPERS
Schippers, O'Brien & Long
79 West Monroe Street—Rm. 801
Chicago, Illinois 60603
Attorneys for Respondent

HON. THOMAS P. SULLIVAN
United States Attorney
219 South Dearborn Street
Chicago, Illinois 60604

Attn: GARY S. SHAPIRO
Special Attorney
Department of Justice
Attorney for the Kingdom of Sweden

APPENDIX D

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Name of Presiding Magistrate: Honorable James T. Balog

Cause No. 78 M 101 Date November 21, 1978

Title of Cause:

IN THE MATTER OF: JAN ALF ASSARSSON

Brief Statement of Motion:

RESPONDENT'S MOTION BASED UPON NEWLY DISCOVERED EVIDENCE FOR RECONSIDERATION OF THIS COURT'S OCTOBER 20, 1978 ORDER IS ENTERED. THE MAGISTRATE'S MEMORANDUM OF OCTOBER 20, 1978 PAGE 12, SECTION XI, NUMBER 1, LINE 3, THE FOLLOWING WORDS ARE TO BE ADDED AFTER THE WORD, CHARGES, "UNDER THE TERMS OF THE TREATY". RESPONDENT'S MOTIONS TO VACATE THAT ORDER, DISMISS THE EXTRADITION PROCEEDINGS, AND DISCHARGE THE RESPONDENT FROM THE TERMS OF THE BOND ARE DENIED. ENTER ORDER.

Balog, *Magistrate*

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA, *Plaintiff,*	
vs.	**No. 78 M 101**
JAN ALF ASSARSSON, *Defendant.*	

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause before the HONORABLE JAMES T. BALOG, one of the Magistrates of said Court, in his Courtroom in the United States Courthouse, Chicago, Illinois, on Tuesday, November 21, 1978, at the hour of 10:30 o'clock a.m.

APPEARANCES:

UNITED STATES ATTORNEY
219 South Dearborn Street
Chicago, Illinois 60604
By: MS. ALEXANDRA KWOKA,
Assistant United States Attorney

appeared on behalf of the Plaintiff.

PEDERSON & HOUPT
180 North LaSalle Street, Room 3100
Chicago, Illinois 60601
By: MR. SHELDON DAVIDSON

appeared on behalf of the Defendant.

THE CLERK: In the Matter of Jan Alf Assarsson, 78 M 101.

THE COURT: Your motion, counsel.

MR. DAVIDSON: Yes, your Honor, this Court entered an order in which extradition proceedings on October 20, 1978—in part your Honor stated that you found that Jan Alf Assarsson had been charged in Sweden with certain crimes.

On that date, October 20, 1978, through its prosecutor, Rogner Emanuelson (phonetic) filed a petition in the Malmo District Court, Malmo, Sweden, in which he applied at that time through his petitioner that as of October 20, 1978, Sweden had not filed any charges against Jan Assarsson; that admission is implicit from the petition filed by Emanuelson in which he asks the Court to extend the time till November 1, 1980, in which to file charges against Assarsson.

The position taken by the United States of America here on behalf of the Kingdom of Sweden was that Assarsson was in fact charged, although we contend that there was no evidence to support that. Nevertheless, this Court found contrary to the respondent's position. However, now, we have an admission—a judicial admission—by a party to this action, the Kingdom of Sweden acting through the U. S. Attorney's office here stating that one of the cornerstones of this Court's jurisdiction is absent. This court does not have jurisdiction to order the extradition of Assarsson unless Assarsson has been charged by the Country of Sweden, and the Country of Sweden on the very same day that this Court entered its order admitted in a judicial document filed in the Malmo District Court that Assarsson had not been charged.

In light thereof, and we have attached to our petition, the original envelope which was sent to Mr. Assarsson in the United States, in the upper left-hand corner in Swedish is the word "Malmo District Court" and we had that translated by Mariette Erickson Langless (phonetic) who also testified at the extradition hearing on June 30. And we have attached the document which was sent to Mr. Assarsson from the Malmo District Court which, according to the document, bears the

signature of Judge Acke Roth (phonetic) who was the Judge who entered the original ruling back in March of 1976. He granted the petition to extend the time in which Sweden could file charges against Assarsson to November 1, 1980.

In light of that judicial admission by the Kingdom of Sweden, we ask this Court to reconsider its order of October 20, 1978, and to vacate its order denying our motion to dismiss the respondent and to dismiss all extradition proceedings against him.

MS. KWOKA: Good morning, Alendra Kwoka.

Mr. Shapiro, who is familiar with this matter, is not in attendance today. We received notice of this motion yesterday; it was filed on the 20th. He asked me to request your Honor either to set this matter over or to give him ten days to respond in writing.

Mr. Davidson has made assertions as to the input of these matters; I cannot answer them at this time because I am not familiar with the matter.

THE COURT: My order is self-explanatory as far as I'm concerned. It needs no explanation; it needs no reply. If you are unable to give one I can give you one this morning just by reading from page four—item four of the memorandum that I entered on the 20th, where the respondent was more than merely suspected of a crime in Sweden; criminal charges had begun on good ground. If the proceedings which are now pending—

MR. DAVIDSON: Criminal proceedings.

THE COURT: —if the proceedings which are now pending and upon which the order of detention was issued are not sufficient, "charges under the treaty"—I'm not saying charges under the criminal code—charges under the treaty—then it's a meaningless statement in the treaty and the contracting parties to require the production of an order of detention which was issued without the subject being charged as required under the terms of the treaty. The treaty requirement is that an order of

detention be produced is not meaningless, therefore underlying the order of detention are sufficient charges under the terms of the treaty.

Your motion for me to reconsider will be—what I'm going to do is modify this order to clarify what I meant to say on page 12, which I did say on page 4, and that is, page 12, Item 11, Number 1, "that Jan Alf Assarsson, named in Magistrate's Complaint number 78 M 101 and now appearing before me is the same accused and against whom charges under the terms of the treaty are pending." I'm putting in the words "under the terms of the treaty."

MR. DAVIDSON: Would you repeat that, sir, so I can make a note?

THE COURT: Same thing that I said, "and against whom charges under the terms of the treaty are pending in Sweden." So I have added the words which I have said on Page 4, to Page 12, "under the terms of the treaty." I don't disagree with you, Mr. Davidson, that he's not charged under the criminal law, but he is charged under the terms of the treaty. I'm not here to interpret the criminal law, but certainly I have answered your argument that you have raised in your brief that charges were pending. I'm saying that charges under the terms of the treaty are pending although there may not be charges under the criminal code pending in Sweden.

So, the motion for reconsideration is granted and I have explained it—maybe I should have clarified it, put it in, originally, that's what I meant, so if I reconsider it—

MR. DAVIDSON: Then you're denying the motion, though, to vacate the motion based on newly considered evidence for reconsideration of this Court's order of October 20, 1978?

THE COURT: I have granted the motion. I have reconsidered it and I'm granting the motion.

MR. DAVIDSON: Well, in the body of the motion, your Honor, I have asked that your order of October 20, be vacated and that the extradition proceedings against the respondent be

dismissed and that he be discharged from custody on the ground that Sweden has judicially admitted that he has not been charged in Sweden and therefore this Court is without jurisdiction.

THE COURT: Well, I have reconsidered the motion and granted it and denied your request to have the respondent discharged or the order vacated. I don't know how else you want to explain it.

MR. DAVIDSON: Your Honor, then you have on an earlier occasion given the original document filed with the Clerk to the U.S. Attorney's office for transference because of the petition for habeas corpus now pending before Judge Grady; would you follow that procedure with respect to this motion and give it to the District Attorney's office?

THE COURT: I don't know where the original documents are now. Do you know where they are?

MR. DAVIDSON: I think they're still with Mr. Shapiro; they haven't been—

THE COURT: Has anything been done with them?

MR. DAVIDSON: Yes, we have filed an amended petition for writ of habeas corpus. Judge Grady has asked both parties to get together and to decide which matters shall in fact be briefed in connection with that habeas corpus; we have done so—

THE COURT: Now that there is something pending in the District Court relating to this I think I'm going to send these directly to Judge Grady, and also I'm going to make up an order, and I'll send copies of the actual order to both of you—type up a copy of the transcript and lodge it with the Court and send a copy to me and I'll pay for it.

MR. DAVIDSON: Thank you, your Honor.

MS. KWOKA: Thank you, your Honor.

(Which were all of the proceedings had in the above-entitled matter as of this date.)

APPENDIX E

Convention on Extradition between the United States of America and Sweden

The United States of America and the Kingdom of Sweden desiring to make more effective the cooperation of the two countries in the repression of crime, have resolved to conclude a Convention on Extradition and for this purpose have appointed the following Plenipotentiaries:

His Majesty the King of Sweden;

Gunnar Jarring, Ambassador Extraordinary and Plenipotentiary of Sweden to the United States of America, and

The President of the United States of America;

Dean Rusk, Secretary of State of the United States of America,

who, having communicated to each other their respective full powers, found to be in good and due form, agree as follows:

Article I

Each Contracting State undertakes to surrender to the other, subject to the provisions and conditions laid down in this Convention, those persons found in its territory who have been charged with or convicted of any of the offenses specified in Article II of this Convention committed within the territorial jurisdiction of the other, or outside thereof under the conditions specified in Article IV of this Convention; provided that such surrender shall take place only upon such evidence of criminality as, according to the laws of the place where the person sought shall be found, would justify his commitment for trial if the offense had been there committed.

Article II

Extradition shall be granted, subject to the provisions of this Convention, for the following offenses:

1. Murder, including infanticide; the killing of a human being, when such act is punishable in the United States as voluntary manslaughter, and in Sweden as manslaughter.

2. Malicious wounding; mayhem; willful assault resulting in grievous bodily harm.

3. Kidnapping; abduction.

4. Rape; abortion; carnal knowledge of a girl under the age specified by law in such cases in both the requesting and requested State.

5. Procuration, defined as the procuring or transporting of a woman or girl under age, even with her consent, for immoral purposes, or of a woman or girl over age, by fraud, threats, or compulsion, for such purposes with a view in either case to gratifying the passions of another person; profiting from the prostitution of another.

6. Bigamy.

7. Robbery; burglary, defined to be the breaking into or entering either in day or night time, a house, office, or other building of a government, corporation, or private person, with intent to commit a felony therein.

8. Arson.

9. The malicious and unlawful damaging of railways, trains, vessels, aircraft, bridges, vehicles, and other means of travel or of public or private buildings, or other structures, when the act committed shall endanger human life.

10. Piracy; mutiny on board a vessel or an aircraft for the purpose of rebelling against the authority of the Captain or Commander of such vessel or aircraft; or by fraud or violence taking possession of such vessel or aircraft.

11. Blackmail or extortion.

12. Forgery, or the utterance of forged papers; the forgery or falsification of official acts of government, of public authorities, or of courts of justice, or the utterance of the thing forged or falsified.

13. The counterfeiting, falsifying or altering of money, whether coin or paper, or of instruments of debt created by national, state, provincial, or municipal governments, or of coupons thereof, or of bank-notes, or the utterance or circulation of the same; or the counterfeiting, falsifying or altering of seals of state.

14. Embezzlement by public officers; embezzlement by persons hired or salaried, to the detriment of their employers; larceny; obtaining money, valuable securities or other property by false pretenses, or by threats of injury; receiving money, valuable securities or other property knowing the same to have been embezzled, stolen or fraudulently obtained.

15. Making use of the mails or other means of communication in connection with schemes devised or intended to deceive or defraud the public or for the purpose of obtaining money under false pretenses.

16. Fraud or breach of trust by a bailee, banker, agent, factor, trustee or other person acting in a fiduciary capacity, or director or member or officer of any company.

17. Soliciting, receiving, or offering bribes.

18. Perjury; subornation of perjury.

19. Offenses against the laws for the suppression of slavery and slave trading.

20. Offenses against the bankruptcy laws.

21. Smuggling, defined to be the act of willfully and knowingly violating the customs laws with intent to defraud the revenue by international traffic in merchandise subject to duty.

22. Offenses against the laws relating to the traffic in, use of, or production or manufacture of, narcotic drugs or cannabis.

23. Offenses against the laws relating to the illicit manufacture of or traffic in poisonous chemicals or substances injurious to health.

24. The attempt to commit any of the above offenses when such attempt is made a separate offense by the laws of the Contracting States.

25. Participation in any of the above offenses.

Article III

1. The requested State shall, subject to the provisions of this Convention, extradite a person charged with or convicted of any offense enumerated in Article II only when both of the following conditions exist:

(a) The law of the requesting State, in force when the offense was committed, provides a possible penalty of deprivation of liberty for a period of more than one year; and

(b) The law in force in the requested State generally provides a possible penalty of deprivation of liberty for a period of more than one year which would be applicable if the offense were committed in the territory of the requested State.

2. When the person sought has been sentenced in the requesting State, the punishment awarded must have been for a period of at least four months.

Article IV

1. Extradition need not be granted for an offense which has been committed within the territorial jurisdiction of the requested State, but if the offense has been committed in the requested State by an officer or employee of the requesting State, who is a national of the requesting State, the executive authority of the requested State shall, subject to its laws, have the power to surrender the person sought if, in its discretion, it be deemed proper to do so.

2. When the offense has been committed outside the territorial jurisdiction of the requesting State, the request for extradition need not be honored unless the laws of the requesting State and those of the requested State authorize prosecution of such offense under corresponding circumstances.

3. The words "territorial jurisdiction" as used in this Article and in Article I of this Convention mean: territory, including territorial waters, and the airspace thereover, belonging to or under the control of one of the Contracting States; and vessels and aircraft belonging to one of the Contracting States or to a citizen or corporation thereof when such vessel is on the high seas or such aircraft is over the high seas.

Article V

Extradition shall not be granted in any of the following circumstances:

1. When the person sought has already been or is at the time of the request being proceeded against in the requested State in accordance with the criminal laws of that State for the offense for which his extradition is requested.

2. When the legal proceedings or the enforcement of the penalty for the offense has become barred by limitation according to the laws of either the requesting State or the requested State.

3. When the person sought has been or will be tried in the requesting State by an extraordinary tribunal or court.

4. When the offense is purely military.

5. If the offense is regarded by the requested State as a political offense or as an offense connected with a political offense.

6. If in the specific case it is found to be obviously incompatible with the requirements of humane treatment,

because of, for example, the youth or health of the person sought, taking into account also the nature of the offense and the interests of the requesting State.

Article VI

When the person sought is being proceeded against in accordance with the criminal laws of the requested State or is serving a sentence in that State for an offense other than that for which extradition has been requested, his surrender may be deferred until such proceedings have been terminated or he is entitled to be set at liberty.

Article VII

There is no obligation upon the requested State to grant the extradition of a person who is a national of the requested State, but the executive authority of the requested State shall, subject to the appropriate laws of that State, have the power to surrender a national of that State if, in its discretion, it be deemed proper to do so.

Article VIII

If the offense for which extradition is requested is punishable by death under the law of the requesting State and the law of the requested State does not permit this punishment, extradition may be refused unless the requesting State gives such assurance as the requested State considers sufficient that the death penalty will not be carried out.

Article IX

A person extradited by virtue of this Convention may not be tried or punished by the requesting State for any offense committed prior to his extradition, other than that which gave rise to the request, nor may he be re-extradited by the requesting State to a third country which claims him, unless the

surrendering State so agrees or unless the person extradited, having been set at liberty within the requesting State, remains voluntarily in the requesting State for more than 45 days from the date on which he was released. Upon such release, he shall be informed of the consequences to which his stay in the territory of the requesting State might subject him.

Article X

To the extent permitted under the law of the requested State and subject to the rights of third parties, which shall be duly respected, all articles acquired as a result of the offense or which may be required as evidence shall be surrendered.

Article XI

1. The request for extradition shall be made through the diplomatic channel and shall be supported by the following documents:

(a) In the case of a person who has been convicted of the offense: a duly certified or authenticated copy of the final sentence of the competent court. However, in exceptional cases, the requested State may request additional documentation.

(b) In the case of a person who is merely charged with the offense: a duly certified or authenticated copy of the warrant of arrest or other order of detention issued by the competent authorities of the requesting State, together with the depositions, record of investigation or other evidence upon which such warrant or order may have been issued and such other evidence or proof as may be deemed competent in the case.

2. The documents specified in this Article must include a precise statement of the criminal act with which the person sought is charged or of which he has been convicted, and the place and date of the commission of the criminal act. The said documents must be accompanied by an authenticated copy of

the texts of the applicable laws of the requesting State including the laws relating to the limitation of the legal proceedings or the enforcement of the penalty for the offense for which the extradition of the person is sought, and data or records which will prove the identity of the person sought as well as information as to his nationality and residence.

3. The documents in support of the request for extradition shall be accompanied by a duly certified translation thereof into the language of the requested State.

Article XII

1. The Contracting States may request, through the diplomatic channel, the provisional arrest of a person, provided that the offense for which he is sought is one for which extradition shall be granted under this Convention. The request shall contain:

(a) A statement of the offense with which the person sought is charged or of which he has been convicted;

(b) A description of the person sought for the purpose of identification;

(c) A statement of his whereabouts, if known; and

(d) A declaration that there exist and will be forthcoming the relevant documents required by Article XI of this Convention.

2. If within a maximum period of 40 days from the date of the provisional arrest of the person in accordance with this Article, the requesting State does not present the formal request for his extradition, duly supported, the person detained will be set at liberty and a new request for his extradition will be accepted only when accompanied by the relevant documents required by Article XI of this Convention.

Article XIII

1. Expense related to the transportation of the person extradited shall be paid by the requesting State. The appropriate legal officers of the country in which the extradition proceedings take place shall, by all legal means within their power, assist the officers of the requesting State before the respective judges and magistrates. No pecuniary claim, arising out of the arrest, detention, examination and surrender of fugitives under the terms of this Convention, shall be made by the requested State against the requesting State other than as specified in the second paragraph of this Article and other than for the lodging, maintenance, and board of the person being extradited prior to his surrender.

2. The legal officers, other officers of the requested State, and court stenographers in the requested State who shall, in the usual course of their duty, give assistance and who receive no salary or compensation other than specific fees for services performed, shall be entitled to receive from the requesting State the usual payment for such acts or services performed by them in the same manner and to the same amount as though such acts or services had been performed in ordinary criminal proceedings under the laws of the country of which they are officers.

Article XIV

1. Transit through the territory of one of the Contracting States of a person in the custody of an agent of the other Contracting State, and surrendered to the latter by a third State, and who is not of the nationality of the country of transit, shall, subject to the provisions of the second paragraph of this Article, be permitted, independently of any judicial formalities, when requested through diplomatic channels and accompanied by the presentation in original or in authenticated copy of the document by which the State of refuge has granted the extradition. In the United States of America, the authority of the Secretary of State of the United States of America shall be first obtained.

2. The permission provided for in this Article may nevertheless be refused if the criminal act which has given rise to the extradition does not constitute an offense enumerated in Article II of this Convention, or when grave reasons of public order are opposed to the transit.

Article XV

To the extent consistent with the stipulations of this Convention and with respect to matters not covered herein, extradition shall be governed by the laws and regulations of the requested State.

Article XVI

1. This Convention shall be ratified and the ratifications shall be exchanged at Stockholm as soon as possible.

2. This Convention shall enter into force upon the exchange of ratifications. It may be terminated by either Contracting State giving notice of termination to the other Contracting State at any time, the termination to be effective six months after the date of such notice.

IN WITNESS WHEREOF, the respective Plenipotentiaries have signed this Convention and have affixed hereunto their seals.

DONE in duplicate, in the Swedish and English languages, both versions being equally authentic, at Washington this twenty-fourth day of October 1961.

FOR SWEDEN:

Gunnar Jarring
(L. S.)

FOR THE UNITED STATES OF AMERICA:

Dean Rusk
(L. S.)

PROTOCOL

At the time of the signing of the Convention on Extradition this day concluded between Sweden and the United States, the undersigned Plenipotentiaries

Considering that the Swedish Penal Code provides for two general types of penalties of deprivation of liberty, namely, simple imprisonment (>>fängelse>>) and imprisonment with hard labor (>>straffarbete>>), and that Article IV of the Swedish Extradition Act of December 6, 1957, provides that no person may be extradited unless the crime for which extradition is requested corresponds to an offense for which a sentence of imprisonment with hard labor (>>straffarbete>>) may be imposed according to Swedish law, and

Realizing that it is the intention of the Government of Sweden to present to the Riksdag a bill to amend the Swedish Penal Code so as to eliminate those two types of deprivation of liberty, replacing them with only one type, namely, imprisonment (>>fängelse>>), and, also, as a consequence thereof to amend accordingly Article IV of the Swedish Extradition Act,

Agree upon the following provisions respecting the application of paragraph 1 of Article III of the Convention:

1. In the event of a request by the United States for extradition from Sweden, the offense for which extradition is requested must be punishable,

a. under United States law, by a possible deprivation of liberty for a period of more than one year and,

b. under Swedish law, had the offense been committed in Sweden, by a possible imprisonment with hard labor (>>straffarbete>>) for a period of more than one year.

2. In the event of a request by Sweden for extradition from the United States, the offense for which extradition is requested must be punishable,

a. under Swedish law, by a possible imprisonment with hard labor (>>straffarbete>>) for a period of more than one year and,

b. under United States law, had the offense been committed in the United States, by a possible deprivation of liberty for a period of more than one year.

This protocol shall enter into force upon entry into force of the Convention, and shall be considered an integral part thereof, if the aforedescribed amendments to the Swedish Penal Code and the Swedish Extradition Act shall not then have taken place and become effective.

This protocol shall terminate on the date upon which the aforedescribed amendments of the Swedish Penal Code and the Swedish Extradition Act become effective. The Government of Sweden shall notify the Government of the United States in writing of such date.

IN WITNESS WHEREOF the respective Plenipotentiaries have signed this protocol and have affixed hereunto their seals.

DONE in duplicate, in the Swedish and English languages, both versions being equally authentic, at Washington this twenty-fourth day of October 1961.

For Sweden:

Gunnar Jarring
(L. S.)

For the United States of America:

Dean Rusk
(L. S.)

APPENDIX F

APPLICATION FOR A DETENTION ORDER

Dated March 5th, 1976.

The Malmö District Courts,
3rd Division, Section 2,
Box 265,
201 22 Malmö 1, Sweden.

Full name: Jan Alf Erland ASSARSSON, born on July 25th, 1943 (Birth Regn. No. 3510).

Address: 159 Sheridan Road, 60043 Kenilworth, Chicago, Illinois, U.S.A.

Petition: That a warrant of arrest be issued.

Suspected on good grounds of:

Gross arson in two cases, attempted gross fraud in two cases and gross fraud (See Appendix A).

. . . 6. The minimum penalty for the crime is two years imprisonment and it is not evident that there is any reason against a warrant for arrest being issued.

(signed) Ragnar Emanuelsson
Acting Chief District Attorney

APPENDIX G

April 1st, 1976.

The District Court gives the following

RULING

Assarsson is suspected on good grounds for instigating gross arson, for gross fraud and attempted gross fraud in the cases as given by the District Attorney.

For this reason, and since it is not obvious that there is any reason against detention, the District Court declares Assarsson arrested.

It can reasonably be feared that Assarsson, by removing property or acting in some other manner, may avoid paying damages which it may be assumed he will be sentenced to pay on account of the crime committed. For this reason, the District Court finds it legal to forbid Assarsson to sell or disperse the tenancy ownership rights belonging to him in the property at Husaren 5 in the Old Town quarter of Malmö, Sweden and at Aldermannen 1 in Lund, Sweden, and to order attachment of as much of Assarsson's personel property, which together with the value of real estate which has been made subject to an Injunction against dispersal by the District Court decision of November 3rd, 1975 corresponds to the Plaintiffs' claims stated, being a total of 12,123,000 Swedish crowns.

The Court directs that prosecution proceedings shall be commenced not later than on November 1st, 1976.

Any appeal against this Ruling must be lodged separately.

The Court consents to a cable regarding the arrest being sent.

Proceedings took place from 9.0 to 9.10 a.m.

(signed) Ake Roth
Judge

APPENDIX H

STATE OF ILLINOIS
COUNTY OF COOK } SS.:

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DISTRICT

IN RE: EXTRADITION OF
JAN ALF ASSARSSON, A FUGITIVE
FROM THE JUSTICE OF SWEDEN

No. 78 M 101

The deposition of BERTIL ISACSON, taken pursuant to Notice and pursuant to the Federal Rules of Procedure in such cases made and provided by, before VIVIAN A. PISANI, C.S.R. and Notary Public within and for the County of Cook and State of Illinois, taken at Riddargatan 18 11451, Stockholm, Sweden, on the 21st day of June, A.D., 1978, at the hour of 9:30 o'clock A.M.

PRESENT:

MESSRS. PEDERSON & HOUPT,
By: MR. BARRY YAVITZ
Appeared on behalf of Jan Alf Assarsson

(Witness duly sworn).

MR. YAVITZ: Let the record reflect that this is the deposition of Bertil Isacson, taken pursuant to Notice and the applicable Federal Rules of procedure in such cases made and provided for.

Let the record further reflect that Gary Shapiro, Assistant United States Attorney, has informed Mr. Sheldon Davidson that the United States will not attend this deposition, and will not send a representative to this deposition.

Sir, can you speak and understand English?

THE WITNESS: Yes.

BERTIL ISACSON,

called as a witness herein, having been first duly sworn on oath, was examined and testified as follows:

EXAMINATION
BY
MR. YAVITZ:

Q. Would you state your full name and spell it?

My name is Bertil Isacson, B-e-r-t-i-l, I-s-a-c-s-o-n, born 1922.

Q. You understand the difference between telling the truth and not telling the truth?

A. Yes.

Q. And you affirm that what you say here today will be the truth and nothing but the truth?

A. Yes.

Q. Where do you live?

A. I live in Stockholm, Sweden. The address is Brannkyrkagatan 87. I spell it. B-r-a-n-n-k-y-r-k-a-g-a-t-a-n 87.

Q. What is your occupation?

A. I'm a lawyer.

Q. When—strike that.

Could you please tell me your professional experience in the field of law?

A. I graduated as a Bachelor of Law, studying at the University of Lund, Sweden. I was graduated 1950. I have been acting as a Judge in District Courts for six years, whereby, I have passed sentences on a large number of gross criminal actions. Furthermore, I have served as a Head of the Department Section of the Commissioner of Military Affairs for four years and District Judge with the Stockholm City Law Courts during the period July the 1st, 1967 to May the 21st, 1970. Part of my duties with the Commissioner of Military Affairs was to act as a prosecutor. In 1954, for three months, I was District Prosecutor in Gothenburg and dealt with cases, both in the District Court and in the Court of Appeals. During the period August 15th, 1966-August 15th, 1967, I have been a Reading Clerk to the Supreme Court. During the period June the 1st, 1970 to March the 6th, 1974, I served as a Justice of the Court of Appeals in one of Sweden's five Courts of Appeal. I have also participated in court resolutions regarding a large number of gross criminal actions. For five years, I served as an attorney with the law firm of Henning Sjöstrom, Stockholm.

Q. When you say that you were a judge in the District Courts and heard a large number of gross criminal actions, does the term gross criminal actions include crimes such as gross fraud, gross arson, and attempted gross fraud?

A. Yes.

Q. Approximately how many criminal cases did you hear when you were a District Court Judge?

A. About five to seven a week.

Q. Under Swedish law, what types of offenses are subject to public prosecutions?

A. Almost all.

Q. Does that include the crimes of gross arson, gross fraud, and attempted gross fraud?

A. Yes.

Q. Under Swedish law, is there any statutory provision for preliminary investigations for public prosecution cases?

A. Yes, Chapter 23, the Swedish Code of Judicial Procedure.

Q. When does the preliminary investigation begin?

A. A preliminary investigation is initiated as soon as, based upon accusations or otherwise, there is cause to believe that an offense falling within the domain of public prosecution has been committed and the police or prosecutor decides to start an investigation.

Q. Under Swedish law, is there any provision which requires the prosecutor to allow the suspected person the opportunity to examine all the information gathered during the preliminary investigation?

A. There is a provision, and that provision is Chapter 23, Section 18 of the Swedish Code of Judicial Procedure.

Q. Would you please tell me how under Swedish law a person is charged, by that I mean accused, of committing a crime under the laws of Sweden?

A. Under Chapter 45, Section I of the Swedish Code of Judicial Procedure, for cases involving the crimes of gross arson, gross fraud, and attempted gross fraud, there is only one way, and that is by the prosecutor filing with the Court a summons application. For minor cases, such as traffic cases, the prosecutor can charge a person with that type of crime by serving the summons directly to the person.

Q. Under Swedish law, before the prosecutor decides to charge, by that I mean accuse, a person of committing a crime in Sweden, what must he do?

A. He must inform the person about what is in the preliminary investigation file and give him and his defender opportunity to read it.

Q. Would you please assume the following facts to be true:

A Judge in Sweden issues a ruling, which says that a person is suspected on good grounds for instigating gross arson, gross fraud, and attempted gross fraud, and the ruling further states that the Court directs that prosecution proceedings shall be commenced not later than on a date certain.

Based upon your experience with criminal law and procedures in Sweden, do you have an opinion whether or not such a ruling charges, by that I mean accuses, a person with the commission of a crime under Swedish law?

A. My answer is that the person is merely under suspicion. He's not charged.

Q. Upon what do you base that opinion?

A. I refer to Chapter 45, Section I, in the Swedish Code of Judicial Procedure.

Q. Let me show you what I have marked for identification as Assarsson's Exhibit No. 1, which appears to be a ruling issued by Judge Ake Roth on April 1st, 1976, which Exhibit is in Swedish, and I will also show you what have been marked as Exhibits 2 and 3, which purport to be English translations of Exhibit No. 1, and ask you to read them.

A. (Indicating).

Q. Have you read them?

A. Yes.

Q. Based upon your experience with criminal law and procedures in Sweden, can you tell me whether or not that ruling of which Exhibit 1 is in Swedish and Exhibits 2 and 3 purport to be English translations, charges, by that I mean accuses, Jan Assarsson with the commission of any crime under Swedish law?

A. My answer is no.

Q. Does that ruling, of which Exhibit 1 is in Swedish and Exhibits 2 and 3 purport to be English translations, state when charges shall be filed against Jan Assarsson?

A. Yes.

Q. And what is that date?

A. November the 1st, 1976.

Q. Under that ruling, of which Exhibit No. 1 is in Swedish and Exhibits 2 and 3 purport to be English translations, as of what date must the prosecutor commence prosecution proceedings?

A. At the same date, November the 1st, 1976.

Q. In other words, the filing of charges and the commencement of prosecution proceedings occur at the same time, and that is by the filing of a summons application with the Court?

A. Yes.

Q. How can the public prosecutor file charges against Jan Assarsson?

A. Only by filing a summons application.

Q. Do you know Jan Assarsson?

A. Yes, he is our client.

MR. YAVITZ: Mark these as Exhibits 4, 5, 6, and 7.

(Whereupon, Assarsson's Exhibits 4, 5, 6, and 7 were marked for identification).

Let me show you what has been marked as Assarsson's Exhibit No. 4, which is in Swedish, and I will also show you what has been marked as Assarsson's Exhibit No. 5, which is the English translation of Exhibit No. 4 and translated by Ernst Lindberg, L-i-n-d-b-e-r-g, authorized by the Swedish Board of Commerce as translator to and from English, and ask you to look at these documents.

A. (Indicating).

Q. You have read them?

A. Yes.

Q. Have you ever seen Exhibit No. 4 before?

A. Yes, I have.

Q. And can you identify it, can you tell me what it is?

A. Yes. It's a letter from Mr. Henning Sjöström to the prosecutor Ragnar Emanuelsson from the 8th of June, 1977.

Q. Would you read the Exhibit, please?

A. Yes.

Q. Would you read it out loud, please?

A. The case of Yourself versus Jan Assarsson in the matter of instigation of gross arson.

The preliminary investigation of Jan Assarsson was commenced in October, 1975. Despite the fact that one and a half years have elapsed since commencement of the preliminary investigation, there has been no decision forthcoming from you with respect to prosecution.

Under Chapter 23, Section 4 of the Code of Judicial Procedure, the preliminary investigation should be conducted in such a way that no one is unnecessarily laid open to suspicion or should incur any law, the preliminary investigation shall be conducted as speedily as the circumstances permit. If there are no longer grounds to proceed with it, it shall be discontinued.

With reference to the above, I would request notification as to when your decision in the matter of prosecution may be expected.

I also request under Chapter 23, Section 18 of the Code of Judicial Procedure to be notified of what has occurred during preliminary investigation. In view of the long period of time the preliminary investigation has been underway, it is obvious that this can be done without detriment to the inquiry.

Q. Is Exhibit No. 5 an original signed by the translator—strike that.

Exhibit No. 5 is a—on the first page is a xerox, is that correct?

A. Yes.

Q. And on the second page, or the reverse side of Exhibit No. 5 is a certification from the translator, Lindberg, signed by him, an original signature of his, is that correct?

A. Yes.

Q. And who is Mr. Sjöström?

A. He is the head of this law firm.

Q. Let me now show you what has been marked for identification as Exhibit No. 6, which is in Swedish and contains the original signature or what purports to be a signature of R. Emanuelsson, and also let me show you what has been marked for identification as Assarsson's Exhibit No. 7, which is the English translation of Exhibit 6, and at the bottom of Exhibit 7 is the certification of the translator, Lindberg, which contains his original signature, and ask you to read them.

A. Yes, I have done that, (Indicating).

Q. What is it?

A. It is a letter from the prosecutor, Ragnar Emanuelsson, to the attorney Henning Sjöström, dated the 10th of June, 1977.

Q. Is Exhibit 6 an original?

A. Yes, it is.

Q. And could you read Exhibit No. 6 for the record?

A. Yes, I have a translation here made by the authorized translator, Ernst Lindberg, and it says:

Public Prosecutor versus Jan and Sven Assarsson in the matter of instigation of and complicity in gross arson.

In reply to your communications in the above case, I would inform you that it is judged to be to the detriment of the preliminary investigation to provide the suspects with the whole inquiry at the present stage. Before this has happened, no prosecution may be instituted, (See Chapter 23, Section 18 of the Code of Judicial Procedure.)

Signed R. Emanuelsson

Q. Are Exhibits No. 4 and 6 documents which are kept in your files?

A. Yes.

Q. Are these documents kept in your files in the ordinary course of business?

A. Yes.

Q. And is it your—is it the business of your law firm to keep such records?

A. Yes.

Q. Are you available to come to the United States to testify in this case?

A. Yes, but not before September, this year.

MR. YAVITZ: Thank you.

(AND FURTHER DEPONENT SAITH NOT).

IN RE: EXTRADITION OF

JAN ALF ASSARSSON, A FUGITIVE FROM THE JUSTICE OF SWEDEN.

No. 78 M 101

This is to certify that I have read the aforegoing deposition and that it accurately states the questions asked and answers given by me at said deposition on this 21st day of June, 1978, held at Riddargatan 18 11451, Stockholm, Sweden, at the hour of 9:30 o'clock a.m.

Bertil Isacson

SUBSCRIBED AND SWORN TO BEFORE ME THIS 21ST DAY OF JUNE, A.D., 1978.

Vivian A. Pisani (Seal)

Notary Public

(Assarsson Exhibit #5 for I.D.)
8th June 1977

Public Prosecutor
Ragnar Emanuelsson
Office of the Public Prosecutor
Box 4070
203 11 MALMÖ 4

HS/BI/sh
The case of Yourself ./. Jan Assarsson in the matter of instigation of gross arson

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The preliminary investigation on Jan Assarsson was commenced in October 1975. Despite the fact that 1½ years have elapsed since commencement of the preliminary investigation, there has been no decision forthcoming from you with respect to prosecution.

Under Chapt 23, § 4 of the Code of Judicial Procedure, the preliminary investigation should be conducted in such a way that no one is unnecessarily laid open to suspicion or should incur any cost or suffer any inconvenience. Under the same section of the law, the preliminary investigation shall be conducted as speedily as the circumstances permit. If there are no longer grounds to proceed with it, it shall be discontinued.

With reference to the above, I would request notification as to when your decision in the matter of prosecution may be expected.

I also request under Chapt 23, § 18 of the Code of Judicial Procedure to be notified of what has occurred during preliminary investigation. In view of the long period of time the preliminary investigation has been underway, it is obvious that this can be done without detriment to the inquiry.

Stockholm 8th June 1977
Henning Sjöström

(Assarsson Exhibit #7 for I.D.)

OFFICE OF THE PUBLIC PROSECUTOR

Malmö District
Public Prosecutor R Emanuelsson — 10th June 1977
Ext 17, is — C 12003-76

Advokat Henning Sjöström
Juristhuset
Riddargatan 18
114 51 STOCKHOLM

Pub. Pros. ./. Jan and Sven Assarsson in the matter of instigation of and complicity in gross arson

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In reply to your communications in the above case, I would inform you that it is judged to be to the detriment of the preliminary investigation to provide the suspects with the whole inquiry at the present stage. Before this has happened, no prosecution may be instituted (see Chapt 23, § 18 of the Code of Judicial Procedure).

(sgd) R Emanuelsson

Certified correct translation
of the original in the Swedish
language.

Stockholm 21st June 1978

Ernst Lindberg
Ernst Lindberg
Authorised by the Swedish Board
of Commerce as translator to
and from English.

I, the undersigned, Christer Wahlén, Notary Public a.i. in Stockholm, Sweden, hereby certify that Mr. Ernst Lindberg, a translator authorized by the Swedish Board of Commerce, has personally signed his name above.

Stockholm, June 21, 1978.

Ex officio:
Christer Wahlén
Christer Wahlén

APPENDIX I

STATE OF ILLINOIS
COUNTY OF COOK } SS.:

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE: EXTRADITION OF
JAN ALF ASSARSSON, A FUGITIVE
FROM THE JUSTICE OF SWEDEN.

No. 78 M 101

The Sworn Statement of Jan Wijkstrom, taken pursuant to Notice and pursuant to the Federal Rules of procedure in such cases made and provided by, before VIVIAN A. PISANI, C.S.R. and Notary Public within and for the County of Cook, State of Illinois, taken at 4 Drottningtorget, Malmo, Sweden, on the 18th day of June, A.D., 1978, at the hour of 7:30 o'clock P.M.

PRESENT:

MESSRS. PEDERSON & HOUPT,
BY: MR. BARRY YAVITZ,
Appeared on behalf of Jan Alf Assarsson

(Witness duly sworn.)

MR. YAVITZ: Let the record reflect that this is the deposition of Jan Wijkstrom, taken pursuant to Notice and the Federal Rules of procedure in such cases as made and provided for.

Let the record further reflect that we have been here continuously since well before 2:00 p.m. It is now 7:30 p.m. and no representative from the United States Government has appeared.

The witness is duly sworn. You understand, sir, the difference between telling the truth and not telling the truth and you affirm that what you say here today will be the truth and nothing but the truth?

THE WITNESS: Yes.

(Interpretor duly sworn.)

BO ROLAND NICOLIN,

called as an interpretor herein, having been first duly sworn on oath, interpreted the English questions into Swedish and the Swedish answers into English as follows:

and

JAN WIJKSTROM,

called as a witness herein, having been first duly sworn on oath, was examined and testified as follows:

EXAMINATION
BY
MR. YAVITZ.

Q. Would you state your full name?

A. Jan Wijkstrom.

Q. And where do you live?

A. Falsterbo.

Q. And you are a citizen of Sweden?

A. Yes.

Q. And how old are you?

A. Forty-four.

Q. And please tell me your educational background.

A. Matriculation examination and plus high school.

Q. When did you graduate from law school?

A. 1961.

Q. And are you licensed to practice law in Sweden?

A. Yes.

Q. And when were you first licensed?

A. 1967.

Q. And are you a member of any professional associations in Sweden?

A. Swedish Bar Association.

Q. And have you served as a public defender—strike that. Are you a public defender?

A. Yes.

Q. How long have you been a public defender, since what year?

A. In different cases since 1967.

Q. Approximately how many cases have you been a public defender?

A. Between two and three thousand.

Q. All right. Under Swedish law, what types of offenses are subject to public prosecutions?

A. Practically all.

Q. And under Swedish law, is there a statutory provision for preliminary investigations for public prosecutions?

A. There is.

Q. And what is that provision?

A. Chapter 23 of the Swedish Code of Judicial Procedure.

Q. And under Swedish law, is there any statutory provision which requires the prosecutor to allow the suspected person the opportunity to examine all the information gathered during the preliminary investigation?

A. Yes.

Q. What is that provision?

A. Chapter 23, Section 18.

Q. And is that of the Swedish Code of Judicial Procedure?

A. Yes.

Q. Tell me, sir, how under Swedish law a person is charged, by that I mean accused, of committing a crime in Sweden?

A. By the way the prosecutor gives in a summons application to the Court.

Q. And when—before the prosecutor decides to charge, by that I mean accuse, a person of committing a crime in Sweden, what must he do?

A. He has to show the investigation to the suspect and to his defender, attorney.

Q. Would you assume, for the moment, the following facts to be true:

A Judge in Sweden issues a ruling which says a person is suspected on good grounds for instigating gross arson, for gross fraud, and attempted gross fraud, and the ruling further states that the Court directs the prosecution—that prosecution proceedings shall be commenced not later than on a date certain.

Based upon your experience as an attorney in Sweden and as a public defender, do you have an opinion as to whether or not such a ruling charges, by that I mean accuses, a person with the commission of a crime in Sweden?

A. Yes.

Q. What is your opinion?

A. I have an opinion. It is no.

Q. Such a ruling does not charge a person with a crime?

A. No.

Q. And upon what do you base that opinion?

A. Under Chapter 45, Section 1.

Q. Let me show you what I have marked for identification this date as Assarsson's Exhibit No. 1, which purports to be a ruling issued by Judge Ake Roth on April 1st, 1976, which Exhibit is in Swedish. I will also show you what have been marked as Exhibits 2 and 3, which purport to be English translations of Exhibit No. 1, and ask you to read those.

A. Okay, (Indicating).

Q. Based upon your experience as an attorney in Sweden and as a public defender since 1967, do you have an opinion as to whether or not Judge Ake Roth's ruling of April 1st, of which is Assarsson's Exhibit 1 is a copy in Swedish and Assarsson's Exhibits 2 and 3 are copies in English, charges, by that I mean accuses, Jan Assarsson with the commission of any crime under Swedish law?

A. No.

Q. You have no opinion?

A. I have an opinion.

Q. And what is your opinion?

A. It is, no, it doesn't charge.

Q. Does Judge Ake Roth's ruling of which Exhibit 1 is a copy in Swedish and Exhibits 2 and 3 are in English, state when charges shall be filed against Assarsson?

A. Yes.

Q. What is that date?

A. November 1st, 1976.

Q. And under Judge Ake Roth's ruling, of which Exhibit 1 is a Swedish version and Exhibits 2 and 3 purport to be English translations, as of what date must the prosecutor commence prosecution proceedings?

A. 1st of November, 1976.

Q. In other words, the filing of charges and the commencement of criminal proceedings occur at the same time, and that is by the filing of the summons application with the Court?

A. Yes.

Q. Would you tell me how the public prosecutor can file criminal charges against Jan Assarsson for the charges in Judge Ake Roth's ruling?

A. By giving in a summons application to the Court.

Q. Based upon your experience as an attorney in Sweden and a public defender since 1967, do you have an opinion as to whether or not public prosecution can be commenced against a Swedish citizen without that person being present in Sweden?

A. Yes, I have an opinion.

Q. What is your opinion?

A. He can.

Q. Based upon your experience as an attorney in Sweden and as a public defender since 1967, do you have an opinion as to whether or not a Swedish citizen can be charged with the commission of a crime, by that I mean accused of the commission of a crime, without that person being present in Sweden at the time the charges are filed?

A. Yes.

Q. What is that opinion?

A. He can.

Q. Based upon your experience as a public defender since 1967, and as an attorney, is it possible for a person to be arrested, placed in jail for six months or even longer, and never have charges brought against him?

A. Yes.

MR. YAVITZ: I have no further questions.

(AND FURTHER DEPONENT SAITH NOT).

I, Bo R. NICOLIN, Public Translator of this City of Mälmo, Sweden, and official translator of the Swedish and English languages, duly commissioned and qualified in accordance with the laws of Sweden, do hereby certify the foregoing to be a true and faithful translation of the attached Sworn Statement dated June 18th, 1978.

IN WITNESS WHEREOF, I have hereunto set my hand and seal at Mälmo, Sweden, this 19th day of June, A. D., 1978.

By virtue of my Office

Bo R. Nicolin
Bo R. Nicolin

[Seal]

(Assarsson Exhibit #2 for I.D.)

April 1st, 1976.

The District Court gives the following

RULING

Assarsson is suspected on good grounds for instigating gross arson, for gross fraud and attempted gross fraud in the cases as given by the District Attorney.

For this reason, and since it is not obvious that there is any reason against detention, the District Court declares Assarsson arrested.

It can reasonably be feared that Assarsson, by removing property or acting in some other manner, may avoid paying damages which it may be assumed he will be sentenced to pay on account of the crime committed. For this reason, the District Court finds it legal to forbid Assarsson to sell or disperse the tenancy ownership rights belonging to him in the property at Husaren 5 in the Old Town quarter of Malmö, Sweden and at Aldermannon 1 in Lund, Sweden, and to order attachment of as much of Assarsson's personal property, which together with the value of real estate which has been made subject to an Injunction against dispersal by the District Court decision of November 3d, 1975 corresponds to the Plaintiffs' claims stated, being a total of 12,123,000 Swedish crowns.

The Court directs that prosecution proceedings shall be commenced not later than on November 1st, 1976.

Any appeal against this Ruling must be lodged separately.

The Court consents to a cable regarding the arrest being sent.

Proceedings took place from 9.0 to 9.10 a.m.

(signed) Ake Roth
Judge

I hereby declare that the above is a true translation of the photocopy of the original document in Swedish presented to me.

Stockholm, Sweden, November 18th, 1977

Joyce E. Johnson
Joyce E. Johnson

(Mrs.) Joyce E. Johnson, authorized by the Swedish Board of Commerce as translator to English.

EXHIBIT "F"

(Assarsson Exhibit #3 for I.D.)

April 1st 1976.

The District Court gives the following

RULING

Assarsson is suspected on good grounds for instigating gross arson, for gross fraud and attempted gross fraud in the cases as given by the District Attorney.

For this reason, and since it is not obvious that there is any reason against detention, the District Court issued a warrant for the arrest of Assarsson.

It can reasonably be feared that Assarsson, by removing property or acting in some other manner, may avoid paying damages which it may be assumed that he will be sentenced to pay on account of the crime committed. For this reason, the District Court finds it legal to forbid Assarsson to sell or disperse the tenancy ownership rights belonging to him in the property at Husaren 5 in the Old Town quarter of Malmö, Sweden and at Aldermannen 1 in Lund, Sweden, and to order attachment of as much of Assarsson's personal property, which together with the value of real estate which has been made subject to an Injunction against dispersal by the District Court decision of November 3rd, 1975 corresponds to the Plaintiffs' claims stated, being a total of 12,123,000 Swedish crowns.

The Court directs that prosecution proceedings shall be commenced not later than on November 1st, 1976.

Any appeal against this Ruling must be ledged separately.

The Court consents to a cable regarding the warrant for arrest being sent.

Proceedings took place from 9.0 to 9.10 a.m.

(signed) Ake Roth
Judge

I hereby declare that the above is a true translation of the photocopy of the original document in Swedish presented to me.

Stockholm, Sweden, April 23rd, 1976

Joyce E. Johnson
Joyce E. Johnson

(Mrs.) Joyce E. Johnson, authorized by Stockholm Chamber of Commerce as translator to English.

EXHIBIT "F"

No. 80-1423

APR 3 1981
ALEXANDER L. STE
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1980

JAN ALF ASSARSSON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

WADE H. MCCREE, JR.
Solicitor General

JOHN C. KEENEY
Acting Assistant Attorney General

GLORIA C. PHARES
Attorney

Department of Justice
Washington, D.C. 20530
(202) 633-2217

QUESTION PRESENTED

Whether the court of appeals correctly concluded that the magistrate's determination that petitioner was properly "charged" by Sweden with extradictable offenses is not subject to habeas corpus review.

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-19a) is reported at 635 F. 2d 1237. The district court's denial of the petition for a writ of habeas corpus was announced in open court (C.A. App. 179-188) and is not reported.[1] The magistrate's opinion in the underlying extradition proceeding (Pet. App. 1c-12c), as modified (Pet. App. 1d), is not reported.

JURISDICTION

The judgment of the court of appeals was entered on October 31, 1980. A petition for rehearing was denied on December 23, 1980 (Pet. App. 1b). The petition for a writ of certiorari was filed on February 23, 1981. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

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[1] "C.A. App." refers to the Joint Appendix in the court of appeals.

STATEMENT

1. Petitioner, a subject of the Kingdom of Sweden, was admitted into the United States in 1960 as a permanent resident. Since then, he has conducted an import-export business that includes the purchase of merchandise for resale in European markets (Pet. 6). On March 5, 1976, a prosecutor in Malmo, Sweden petitioned the Swedish district court in Malmo to issue a "warrant of arrest" (Pet. App. 1f), alleging in support of the application that petitioner was "suspected on good grounds" of two counts of arson, one count of gross fraud, and two counts of attempted gross fraud. In response, Swedish District Court Judge Ake Roth, acting pursuant to Chapter 24, Section 1 of the Swedish Code of Judicial Procedure (C.A. App. 114), issued a "ruling" dated April 1, 1976, declaring petitioner arrested, forbidding the sale of his Swedish properties, and directing that "prosecution proceedings" commence no later than November 1, 1976 (Pet. App. 1g).[2]

2. On May 15, 1978, the United States filed a complaint in the United States District Court for the Northern District of Illinois seeking petitioner's extradition on behalf of the Government of Sweden (C.A. App. 13-15).[3] It alleged that petitioner had been "duly and legally charged in Sweden

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[2]In the subsequent extradition proceeding, the magistrate concluded (Pet. App. 3c) that Judge Roth's ruling constituted an "order of detention" as that term is used in the agreement on extradition entered into by Sweden and the United States (Convention on Extradition between the United States of America and Sweden, together with Related Protocol, Oct. 24, 1961, 14 U.S.T. 1845, T.I.A.S. No. 5496). That determination is not challenged here. The deadline fixed by Judge Roth for commencing prosecution has been extended periodically by Swedish court order and is now November 1, 1981 (Pet. App. 4a; Pet. 6).

[3]A prior extradition complaint, filed June 30, 1977, was dismissed for reasons not here relevant. A copy of the Convention on Extradition between the United States of America and Sweden of Oct. 24, 1961 (the "Extradition Treaty") is reprinted as Appendix E to the petition (Pet. App. 1e-12e).

with having committed the crimes of arson, fraud and attempted fraud" and that Sweden, through appropriate diplomatic channels, had demanded petitioner's surrender in order that he stand trial (C.A. App. 13, 14). In response to petitioner's motion to dismiss the extradition proceedings on the ground, *inter alia*, that petitioner was neither formally charged with nor convicted of a crime in Sweden, a United States magistrate held an extensive evidentiary hearing pursuant to 18 U.S.C. 3184 (Pet. App. 3a-4a, 14a). On October 20, 1978, the magistrate denied petitioner's claims and ordered that he be detained pending his surrender to Swedish authorities (Pet. App. 1c-12c). In so ruling, the magistrate explicitly rejected petitioner's claim that he was "merely suspected of a crime" (Pet. App. 4c) and concluded that the order of detention was evidence that "charges under the terms of the treaty" are currently pending against petitioner in Sweden (Pet. App. 4c, 11c, 1d).[4]

3. Petitioner then commenced this habeas corpus proceeding. The district court denied the writ, affirmed the magistrate's determination that petitioner was "charged" as that term is used in the treaty, and stayed petitioner's surrender pending appeal (C.A. App. 179). On appeal, the Seventh Circuit held (Pet. App. 1a-19a) that the magistrate's determination is not within the scope of habeas corpus review as defined by *Fernandez* v. *Phillips*, 268 U.S. 311 (1925). The court of appeals, therefore, did not reach the merits of petitioner's claim (Pet. App. 14a).

ARGUMENT

Petitioner argues (Pet. 9-15) that the court of appeals erred in holding that the magistrate's determination that petitioner was "charged" with offenses in Sweden is not

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[4]In denying petitioner's motion for reconsideration, the magistrate modified his order of October 20, 1978, to make explicit his determination that the charges pending against petitioner in Sweden were "charges" within the meaning of the extradition treaty (Pet. App. 1d).

subject to review. In particular, petitioner claims that the magistrate's finding constituted an improper assumption of jurisdiction, and that the court of appeals' ruling is in conflict with decisions of this Court and will generate confusion in the administration of treaties. We disagree.

1. We note at the outset that extradition rulings are not directly appealable. Review is available, if at all, by writ of habeas corpus. *Collins* v. *Miller*, 252 U.S. 364, 369 (1920). As this Court explained years ago in *Fernandez* v. *Phillips*, 268 U.S. 311, 312 (1925):

> [The writ] is not a means for rehearing what the magistrate already has decided. The alleged fugitive from justice has had his hearing and *habeas corpus* is available only to inquire whether the magistrate had jurisdiction, whether the offence charged is within the treaty and, by a somewhat liberal extension, whether there was any evidence warranting the finding that there was reasonable ground to believe the accused guilty.

Petitioner attempts to fit within the *Fernandez* test by urging that before taking jurisdiction in an extradition proceeding, a magistrate or judge must find that there is a "charge" against the person to be extradited. This "jurisdictional" issue, argues petitioner, is reviewable on habeas corpus. In our view, petitioner's theory founders because it misapprehends the nature of subject matter jurisdiction in an extradition context. Whether petitioner was charged in Sweden is not a basis for jurisdiction; it is simply one of the issues that a magistrate already having jurisdiction[5] must address to determine whether the proceedings instituted against the requested party have complied with the terms of

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[5]Petitioner does not now challenge the magistrate's authority to conduct the extradition hearing at which the disputed finding was made nor does he contend that the magistrate lacked jurisdiction over his person. Thus, it is not disputed that the magistrate had jurisdiction to consider the petition for extradition.

the extradition treaty. See *Garcia-Guillern* v. *United States*, 450 F. 2d 1189, 1192-1193 n.1 (5th Cir. 1971), cert. denied, 405 U.S. 989 (1972); *Freedman* v. *United States*, 437 F. Supp. 1252, 1258 (N.D. Ga. 1977). Petitioner has simply labelled as "jurisdictional" a finding on the merits with which he is unsatisfied. That characterization of the magistrate's finding cannot be employed as a means of broadening habeas corpus review.

Contrary to petitioner's suggestion (Pet. 10), the lower court's refusal to entertain his claim does not mean that a "person merely suspected of * * * criminal activity" may be extradited. For as the court of appeals observed (Pet. App. 13a), the extradition treaty with Sweden "plainly provides that the sufficiency of the evidence underlying the extradition is to be judged by American law," and that "probable cause is necessary to extradite." In the instant case, the magistrate, "[a]fter reviewing the Exhibits and testimony of record and carefully scrutinizing all the evidence of criminality and placing appropriate weight on each relevant item and further realizing that the consequences of an unjust extradition are very serious" (Pet. App. 11c), found that "there is * * * probable cause to believe that there have been [specified] violations of the criminal code of Sweden * * * committed by" petitioner (*ibid.*). And the court of appeals, even though it properly declined to entertain petitioner's appeal insofar as it challenged the magistrate's finding that Swedish charges had been filed, did consider petitioner's claim that the evidence against him was insufficient to justify extradition. See *Fernandez* v. *Phillips*, *supra*, 268 U.S. at 312. The rejection of that claim by both courts below is clearly correct.[6]

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[6]Moreover, a cursory examination of Swedish law suggests that the showing required to obtain an order of detention in Sweden would be sufficient in the United States to obtain a warrant of arrest. Although

The decision below is justified by policy considerations as well. As the court of appeals observed (Pet. App. 14a; citation omitted):

> The court's refusal to review compliance with foreign criminal procedure is not a formalistic application of outmoded law. Rather, the narrow scope of review is based on respect for the sovereignty of other nations. While our courts should guarantee that all persons on our soil receive due process under our laws, that power does not extend to overseeing the criminal justice system of other countries. This respect is embodied in the procedural framework of international extradition, which "gives to the demanding country advantages most uncommon to ordinary civil and criminal litigation."
>
> We are also not expected to become experts in the law of foreign nations. * * * The treatment of this case below demonstrates the dangers inherent in determining the applicability of foreign law. The magistrate

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there are no exact parallels between Swedish and American criminal procedure, it is clear that in Sweden an order of detention cannot be obtained on "mere suspicion" as petitioner suggests. In fact, it appears from Chapter 24, Section 1 of the Swedish Code of Judicial Procedure (C.A. App. 114) that Sweden requires a greater showing than would be demanded by federal or Illinois law. The Swedish Code requires not only a showing of probable cause before an order of detention can be issued, but also proof that the offense is punishable by a year or more of imprisonment and that absent detention, "it reasonably can be expected" that the accused will flee, obstruct justice, or continue his criminal activity (*ibid.*). While the Swedish Code uses the words "suspected on probable cause," there is no reason to assume the phrase differs from "probable cause to believe" (Fed. R. Crim. P. 4) or "reasonable grounds to believe" (Ill. Rev. Stat. ch. 38, § 107-2(c) (1980)). Furthermore, a person arrested under Chapter 24 must be produced before an examining magistrate or released (C.A. App. 117-119).

held an extensive hearing, complete with experts, exhibits, and much other evidence, to try to determine whether there was compliance with Swedish law. We often have difficulty discerning the laws of neighboring States, which operate under the same legal system as we do; the chance of error is much greater when we try to construe the law of a country whose legal system is much different from our own. The possibility of error warns us to be even more cautious of expanding judicial power over extradition matters.

2. Even if the magistrate's finding were reviewable, petitioner's claim that he was not "charged" within the meaning of the extradition treaty lacks support. This Court has consistently held that extradition treaties are to be construed liberally.[7] As the Court wrote in *Factor* v. *Laubenheimer*, 290 U.S. 276, 293-294 (1933):

> In choosing between conflicting interpretations of a treaty obligation, a narrow and restricted construction is to be avoided as not consonant with the principles deemed controlling in the interpretation of international agreements * * *. [I]f a treaty fairly admits of two constructions, one restricting the rights which may be claimed under it, and the other enlarging it, the more liberal construction is to be preferred.

Petitioner's interpretation of the term "charged" as used in Article I of the extradition treaty would render meaningless a substantial portion of Article XI. Article I (Pet. App. 1e) sets out the general obligation of each contracting state

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[7]See, *e.g.*, *Valentine* v. *United States*, 299 U.S. 5, 10 (1936); *Factor* v. *Laubenheimer*, 290 U.S. 276, 293 (1933); *Jordan* v. *Tashiro*, 278 U.S. 123, 127 (1928); *Grin* v. *Shine*, 187 U.S. 181, 184-185 (1902); *Tucker* v. *Alexandroff*, 183 U.S. 424, 437 (1902); *Rice* v. *Ames*, 180 U.S. 371, 374 (1901); *In re Ross*, 140 U.S. 453, 475 (1891); *Geofroy* v. *Riggs*, 133 U.S. 258, 271 (1890).

to surrender to the other "those persons found in its territory who have been charged with or convicted of any of the offenses specified in Article II * * *." Article XI (Pet. App. 7e-8e) prescribes the documents required to support an extradition request. If the requested party has been convicted of an offense, a copy of the final sentence is required; for those "merely charged with [an] offense," a copy of the arrest warrant "or other order of detention" must be provided (Pet. App. 7e).

Thus, the contracting parties obviously contemplated that individuals for whom an order of detention had issued would be within the reach of the extradition treaty. Nevertheless, petitioner argues that a detention order is not sufficient proof that a "charge," as that term is used in Article I, has been lodged. That is plainly incorrect, for as the court of appeals noted (Pet. App. 12a), "[i]f the parties had wished to include the additional requirement that a formal document called a charge be produced, they could have so provided. * * * Since the parties chose not to require production of the charge document, we can easily infer that they did not require the 'substance' of a charge either." Instead, the treaty was tailored to accommodate Sweden's criminal procedure, which provides two mechanisms for detaining a person when there is probable cause to believe he has committed a crime: an arrest warrant and a detention order.[8] As the magistrate correctly held (Pet. App. 4c), when either of these documents has issued, the person named in it has been "charged" within the meaning of the extradition treaty. And

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[8]In the instant case, for some reason the prosecutor styled his petition an "Application for a Detention Order" but requested that "a warrant of arrest" issue (Pet. App. 1f). In response, the Swedish district court issued a "ruling" in which petitioner was "declare[d] * * * arrested." That ruling has been treated throughout this proceeding (and the underlying extradition proceeding) as a detention order. See note 2, *supra*.

as the court of appeals observed (Pet. App. 10a-11a; footnote omitted), "[t]he word 'charge' is * * * used [in Article I of the treaty] in contrast to 'convicted'; that is, persons convicted or charged with certain crimes may be extradited. The term is used in the generic sense only to indicate 'accused.' * * * [Petitioner's] argument converts the treaty's language that individuals be 'charged,' a verb, into a requirement that 'charges,' a noun, be filed. It is based on semantics, not substance."[9] Thus, the claim that petitioner improperly seeks to raise by way of habeas corpus is, in any event, meritless.[10]

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[9]Although petitioner decries the absence of a formal "charge," the Swedish Code of Judicial Procedure refers to the document by which public prosecutions are commenced as a "summons" (C.A. App. 122-124, 126). It thus follows, semantically at least, that if the contracting parties had wished to limit extradition to persons who have been convicted or have had prosecutions formally commenced against them, they would have used the verb "summoned" rather than the verb "charged."

[10]Despite petitioner's contrary assertions (Pet. 9-11), the decision below is not inconsistent with any decision of this Court. In *United States* v. *Patterson*, 150 U.S. 65 (1893), a circuit court commissioner sought payment for services rendered in hearing the testimony of a complaining witness and deciding whether a warrant should issue. Whether his claim had merit turned on the construction of a statute authorizing payment for "hearing and deciding on criminal charges." In concluding that for purposes of that statute "[a] criminal charge * * * exists only when a formal written complaint has been made against the accused and a prosecution initiated" (*id.* at 68), the Court could hardly have been defining the term "charge" for every purpose and in every context, and most especially was not construing the terms of a treaty entered into 68 years later. The other case upon which petitioner relies, *Maximov* v. *United States*, 373 U.S. 49 (1963), does not bear even a surface resemblance to the instant case; moreover, the proposition petitioner extracts from it — that courts should give effect to the "obvious meaning" of a treaty when to do so is not inconsistent with the intent of the parties to it (Pet. 9)—is, while unexceptionable, not relevant here where both the plain meeting of the treaty and the intent of its signatories dictate a result adverse to petitioner's interest.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

WADE H. MCCREE, JR.
Solicitor General

JOHN C. KEENEY
Acting Assistant Attorney General

GLORIA C. PHARES
Attorney

APRIL 1981

DOJ-1981-04